

HOUSE SUBSTITUTE  
FOR  
HOUSE COMMITTEE SUBSTITUTE  
FOR  
SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
SENATE BILLS NOS. 670 & 684

1 AN ACT

2 To repeal sections 191.900, 191.910, 197.310,  
3 197.317, 197.318, 197.340, 197.367, 197.455,  
4 198.012, 198.022, 198.026, 198.029, 198.032,  
5 198.036, 198.039, 198.067, 198.070, 198.073,  
6 198.080, 198.082, 198.085, 198.088, 198.093,  
7 198.525, 198.526, 198.531, 565.186, 565.188,  
8 630.140, 630.167, 660.250, 660.263, 660.270  
9 and 660.300, RSMo, and to enact in lieu  
10 thereof fifty new sections relating to  
11 protection of the elderly, with penalty  
12 provisions.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
14 AS FOLLOWS:

15 Section A. Sections 191.900, 191.910, 197.310, 197.317,  
16 197.318, 197.340, 197.367, 197.455, 198.012, 198.022, 198.026,  
17 198.029, 198.032, 198.036, 198.039, 198.067, 198.070, 198.073,  
18 198.080, 198.082, 198.085, 198.088, 198.093, 198.525, 198.526,  
19 198.531, 565.186, 565.188, 630.140, 630.167, 660.250, 660.263,  
20 660.270 and 660.300, RSMo, are repealed and fifty sections

1

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted from the law.  
Matter in boldface type in the above law is new proposed language.

1 enacted in lieu thereof, to be known as sections 191.900,  
2 191.910, 197.310, 197.317, 197.318, 197.340, 197.370, 197.455,  
3 198.012, 198.019, 198.022, 198.026, 198.029, 198.030, 198.032,  
4 198.036, 198.039, 198.046, 198.067, 198.068, 198.070, 198.073,  
5 198.074, 198.080, 198.082, 198.085, 198.088, 198.093, 198.094,  
6 198.345, 198.525, 198.526, 198.531, 354.407, 565.186, 565.188,  
7 565.200, 630.140, 630.167, 660.071, 660.250, 660.252, 660.263,  
8 660.270, 660.300, 660.302, 660.322, 1, 2 and 3, to read as  
9 follows:

10 191.900. As used in sections 191.900 to 191.910, the  
11 following terms mean:

12 (1) "Abuse", the infliction of physical, sexual or  
13 emotional harm or injury. "Abuse" includes the taking,  
14 obtaining, using, transferring, concealing, appropriating or  
15 taking possession of property of another person without such  
16 person's consent;

17 (2) "Claim", any attempt to cause a health care payer to  
18 make a health care payment;

19 (3) "False", wholly or partially untrue. A false statement  
20 or false representation of a material fact means the failure to  
21 reveal material facts in a manner which is intended to deceive a  
22 health care payer with respect to a claim;

23 (4) "Health care", any service, assistance, care, product,  
24 device or thing provided pursuant to a medical assistance

1 program, or for which payment is requested or received, in whole  
2 or part, pursuant to a medical assistance program;

3 (5) "Health care payer", a medical assistance program, or  
4 any person reviewing, adjusting, approving or otherwise handling  
5 claims for health care on behalf of or in connection with a  
6 medical assistance program;

7 (6) "Health care payment", a payment made, or the right  
8 under a medical assistance program to have a payment made, by a  
9 health care payer for a health care service;

10 (7) "Health care provider", any person [delivering] who is  
11 paid to deliver, or [purporting] purports to deliver, any health  
12 care, and including any employee, agent or other representative  
13 of such a person;

14 (8) "Medical assistance program", [any program to provide  
15 or finance health care to recipients which is established  
16 pursuant to title 42 of the United States Code, any successor  
17 federal health insurance program, or a waiver granted thereunder]  
18 any federal health care program, as defined in 42 U.S.C. Section  
19 1320a-7b(f). A medical assistance program may be funded either  
20 solely by state funds or by state and federal funds jointly. The  
21 term "medical assistance program" shall include the medical  
22 assistance program provided by section 208.151, RSMo, et seq.,  
23 and any state agency or agencies administering all or any part of  
24 such a program;

1           (9) "Person", a natural person, corporation, partnership,  
2       association or any legal entity.

3           191.910. 1. The attorney general shall have authority to  
4       investigate alleged or suspected violations of sections 191.900  
5       to 191.910, or section 198.070, RSMo, if related to a violation  
6       of sections 191.900 to 191.910 and shall have all powers provided  
7       by sections 407.040 to 407.090, RSMo, in connection with  
8       investigations of alleged or suspected violations of sections  
9       191.900 to 191.910, or section 198.070, RSMo, if related to a  
10      violation of sections 191.900 to 191.910 as if the acts  
11      enumerated in subsections 1 to 3 of section 191.905 are unlawful  
12      acts proscribed by chapter 407, RSMo, provided that if the  
13      attorney general exercises such powers, the provisions of section  
14      407.070, RSMo, shall also be applicable; and may exercise all of  
15      the powers provided by subsections 1 and 2 of section 578.387,  
16      RSMo, in connection with investigations of alleged or suspected  
17      violations of sections 191.900 to 191.910, as if the acts  
18      enumerated in subsections 1 to 3 of section 191.905 involve  
19      "public assistance" as defined by section 578.375, RSMo. The  
20      attorney general and [his] the attorney general's authorized  
21      investigators shall be authorized to serve all subpoenas and  
22      civil process related to the enforcement of sections 191.900 to  
23      191.910, or section 198.070, RSMo, if related to a violation of  
24      sections 191.900 to 191.910 and chapter 407, RSMo. In order for

1 the attorney general to commence a state prosecution for  
2 violations of sections 191.900 to 191.910, the attorney general  
3 shall prepare and forward a report of the violations to the  
4 appropriate prosecuting attorney. Upon receiving a referral, the  
5 prosecuting attorney shall either commence a prosecution based on  
6 the report by the filing of a complaint, information, or  
7 indictment within sixty days of receipt of said report or shall  
8 file a written statement with the attorney general explaining why  
9 criminal charges should not be brought. This time period may be  
10 extended by the prosecuting attorney with the agreement of the  
11 attorney general for an additional sixty days. If the  
12 prosecuting attorney commences a criminal prosecution, the  
13 attorney general or [his] the attorney general's designee shall  
14 be permitted by the court to participate as a special assistant  
15 prosecuting attorney in settlement negotiations and all court  
16 proceedings, subject to the authority of the prosecuting  
17 attorney, for the purpose of providing such assistance as may be  
18 necessary. If the prosecuting attorney fails to commence a  
19 prosecution and fails to file a written statement listing the  
20 reasons why criminal charges should not be brought within the  
21 appropriate time period, or declines to prosecute on the basis of  
22 inadequate office resources, the attorney general [shall have  
23 authority to] may commence prosecutions for violations of  
24 sections 191.900 to 191.910, or section 198.070, RSMo, if related

1     to a violation of sections 191.900 to 191.910. In cases where a  
2     defendant pursuant to a common scheme or plan has committed acts  
3     which constitute or would constitute violations of sections  
4     191.900 to 191.910, or section 198.070, RSMo, if related to a  
5     violation of sections 191.900 to 191.910 in more than one state,  
6     the attorney general shall have the authority to represent the  
7     state of Missouri in any plea agreement which resolves all  
8     criminal prosecutions within and without the state, and such  
9     agreement shall be binding on all state prosecutors.

10         2. In any investigation, hearing or other proceeding  
11     pursuant to sections 191.900 to 191.910, or section 198.070,  
12     RSMo, if related to a violation of sections 191.900 to 191.910  
13     any record in the possession or control of a health care  
14     provider, or in the possession or control of another person on  
15     behalf of a health care provider, including but not limited to  
16     any record relating to patient care, business or accounting  
17     records, payroll records and tax records, whether written or in  
18     an electronic format, shall be made available by the health care  
19     provider to the attorney general or the court, and shall be  
20     admissible into evidence, regardless of any statutory or common  
21     law privilege which such health care provider, record custodian  
22     or patient might otherwise invoke or assert. The provisions of  
23     section 326.151, RSMo, shall not apply to actions brought  
24     pursuant to sections 191.900 to 191.910. The attorney general

1 shall not disclose any record obtained pursuant to this section,  
2 other than in connection with a proceeding instituted or pending  
3 in any court or administrative agency. The access, provision,  
4 use, and disclosure of records or material subject to the  
5 provisions of 42 U.S.C. section 290dd-2 shall be subject to said  
6 section, as may be amended from time to time, and to regulations  
7 promulgated pursuant to said section.

8 3. Sections 191.900 to 191.910 shall not be construed to  
9 prohibit or limit any other criminal or civil action against a  
10 health care provider for the violation of any other law. Any  
11 complaint, investigation or report received or completed pursuant  
12 to sections 198.070 and 198.090, RSMo, subsection 2 of section  
13 205.967, RSMo, sections 375.991 to 375.994, RSMo, section  
14 578.387, RSMo, or sections 660.300 and 660.305, RSMo, which  
15 indicates a violation of sections 191.900 to 191.910, shall be  
16 referred to the attorney general. A referral to the attorney  
17 general pursuant to this subsection shall not preclude the  
18 agencies charged with enforcing the foregoing sections from  
19 conducting investigations, providing protective services or  
20 taking administrative action regarding the complaint,  
21 investigation or report referred to the attorney general, as may  
22 be provided by such sections; provided that all material  
23 developed by the attorney general in the course of an  
24 investigation pursuant to sections 191.900 to 191.910 shall not

1 be subject to subpoena, discovery, or other legal or  
2 administrative process in the course of any such administrative  
3 action. Sections 191.900 to 191.910 take precedence over the  
4 provisions of sections 198.070 and 198.090, RSMo, subsection 2 of  
5 section 205.967, RSMo, sections 375.991 to 375.994, RSMo, section  
6 578.387, RSMo, and sections 660.300 and 660.305, RSMo, to the  
7 extent such provisions are inconsistent or overlap.

8 197.310. 1. The "Missouri Health Facilities Review  
9 Committee" is hereby established. [The agency shall provide  
10 clerical and administrative support to the committee. The  
11 committee may employ additional staff as it deems necessary.]  
12 The department of health and senior services shall hire and  
13 administratively supervise any clerical and administrative  
14 support staff to the committee.

15 2. The committee shall be composed of:

16 (1) Two members of the senate appointed by the president  
17 pro tem, who shall be from different political parties; and

18 (2) Two members of the house of representatives appointed  
19 by the speaker, who shall be from different political parties;  
20 and

21 (3) Five members appointed by the governor with the advice  
22 and consent of the senate, not more than three of whom shall be  
23 from the same political party.

24 3. No business of this committee shall be performed without



1 a majority of the full body.

2 4. The members shall be appointed as soon as possible after  
3 September 28, 1979. One of the senate members, one of the house  
4 members and three of the members appointed by the governor shall  
5 serve until January 1, 1981, and the remaining members shall  
6 serve until January 1, 1982. All subsequent members shall be  
7 appointed in the manner provided in subsection 2 of this section  
8 and shall serve terms of two years. The minority legislative  
9 members of the house of representatives and senate shall be  
10 appointed by the minority floor leader of each respective body.

11 5. The committee shall elect a chairman at its first  
12 meeting which shall be called by the governor. The committee  
13 shall meet upon the call of the chairman or the governor.

14 6. The committee shall review and approve or disapprove all  
15 applications for a certificate of need made under sections  
16 197.300 to 197.366. It shall issue reasonable rules and  
17 regulations governing the submission, review and disposition of  
18 applications.

19 7. Members of the committee shall serve without  
20 compensation but shall be reimbursed for necessary expenses  
21 incurred in the performance of their duties.

22 8. Notwithstanding the provisions of subsection 4 of  
23 section 610.025, RSMo, the proceedings and records of the  
24 facilities review committee shall be subject to the provisions of

chapter 610, RSMo.

197.317. 1. After July 1, 1983, no certificate of need shall be issued for the following:

(1) Additional residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility beds above the number then licensed by this state;

(2) Beds in a licensed hospital to be reallocated on a temporary or permanent basis to nursing care or beds in a long-term care hospital meeting the requirements described in 42 CFR, Section 412.23(e), excepting those which are not subject to a certificate of need pursuant to paragraphs (e) and (g) of subdivision (10) of section 197.305; nor

(3) The reallocation of intermediate care facility or skilled nursing facility beds of existing licensed beds by transfer or sale of licensed beds between a hospital licensed pursuant to this chapter or a nursing care facility licensed pursuant to chapter 198, RSMo; except for beds in counties in which there is no existing nursing care facility. No certificate of need shall be issued for the reallocation of existing residential care facility I or II, or intermediate care facilities operated exclusively for the mentally retarded to intermediate care or skilled nursing facilities or beds.

However, after January 1, [2003] 2007, nothing in this section shall prohibit the Missouri health facilities review committee

1 from issuing a certificate of need for additional beds in  
2 existing health care facilities or for new beds in new health  
3 care facilities or for the reallocation of licensed beds,  
4 provided that no construction shall begin prior to [January 1,  
5 2004] July 1, 2007. The provisions of subsections 16 and 17 of  
6 section 197.315 shall apply to the provisions of this section.

7 2. The health facilities review committee shall utilize  
8 demographic data from the office of social and economic data  
9 analysis, or its successor organization, at the University of  
10 Missouri as their source of information in considering  
11 applications for new institutional long-term care facilities.

12 197.318. 1. The provisions of section 197.317 shall not  
13 apply to a residential care facility I, residential care facility  
14 II, intermediate care facility or skilled nursing facility only  
15 where the department of [social] health and senior services has  
16 first determined that there presently exists a need for  
17 additional beds of that classification because the average  
18 occupancy of all licensed and available residential care facility  
19 I, residential care facility II, intermediate care facility and  
20 skilled nursing facility beds exceeds ninety percent for at least  
21 four consecutive calendar quarters, in a particular county, and  
22 within a fifteen-mile radius of the proposed facility, and the  
23 facility otherwise appears to qualify for a certificate of need.  
24 The department's certification that there is no need for

1 additional beds shall serve as the final determination and  
2 decision of the committee. In determining ninety percent  
3 occupancy, residential care facility I and II shall be one  
4 separate classification and intermediate care and skilled nursing  
5 facilities are another separate classification.

6 2. The Missouri health facilities review committee may, for  
7 any facility certified to it by the department, consider the  
8 predominant ethnic or religious composition of the residents to  
9 be served by that facility in considering whether to grant a  
10 certificate of need.

11 3. There shall be no expenditure minimum for facilities,  
12 beds, or services referred to in subdivisions (1), (2) and (3) of  
13 section 197.317. The provisions of this subsection shall expire  
14 January 1, [2003] 2007.

15 4. As used in this section, the term "licensed and  
16 available" means beds which are actually in place and for which a  
17 license has been issued.

18 5. The provisions of section 197.317 shall not apply to any  
19 facility where at least ninety-five percent of the patients  
20 require diets meeting the dietary standards defined by section  
21 196.165, RSMo.

22 6. The committee shall review all letters of intent and  
23 applications for long-term care hospital beds meeting the  
24 requirements described in 42 CFR, Section 412.23(e) under its

1 criteria and standards for long-term care beds.

2 7. Sections 197.300 to 197.366 shall not be construed to  
3 apply to litigation pending in state court on or before April 1,  
4 1996, in which the Missouri health facilities review committee is  
5 a defendant in an action concerning the application of sections  
6 197.300 to 197.366 to long-term care hospital beds meeting the  
7 requirements described in 42 CFR, Section 412.23(e). 8.  
8 Notwithstanding any other provision of this chapter to the  
9 contrary:

10 (1) A facility licensed pursuant to chapter 198, RSMo, may  
11 increase its licensed bed capacity by:

12 (a) Submitting a letter of intent to expand to the  
13 [division of aging] department of health and senior services and  
14 the health facilities review committee;

15 (b) Certification from the [division of aging] department  
16 of health and senior services that the facility:

17 a. Has no patient care class I deficiencies within the last  
18 eighteen months; and

19 b. Has maintained a ninety-percent average occupancy rate  
20 for the previous six quarters;

21 (c) Has made an effort to purchase beds for [eighteen]  
22 twelve months following the date the letter of intent to expand  
23 is submitted pursuant to paragraph (a) of this subdivision. For  
24 purposes of this paragraph, an "effort to purchase" means a copy

1 certified by the offeror as an offer to purchase beds from  
2 another licensed facility in the same licensure category; and

3 (d) If an agreement is reached by the selling and  
4 purchasing entities, the health facilities review committee shall  
5 issue a certificate of need for the expansion of the purchaser  
6 facility upon surrender of the seller's license; or

7 (e) If no agreement is reached by the selling and  
8 purchasing entities, the health facilities review committee shall  
9 permit an expansion for:

10 a. A facility with more than forty beds may expand its  
11 licensed bed capacity within the same licensure category by  
12 twenty-five percent or thirty beds, whichever is greater, if that  
13 same licensure category in such facility has experienced an  
14 average occupancy of ninety-three percent or greater over the  
15 previous [six] four quarters;

16 b. A facility with fewer than forty beds may expand its  
17 licensed bed capacity within the same licensure category by  
18 twenty-five percent or ten beds, whichever is greater, if that  
19 same licensure category in such facility has experienced an  
20 average occupancy of ninety-two percent or greater over the  
21 previous [six] four quarters;

22 c. A facility adding beds pursuant to subparagraphs a. or  
23 b. of this paragraph shall not expand by more than fifty percent  
24 of its then licensed bed capacity in the qualifying licensure

1 category;

2 (2) Any beds sold shall, for five years from the date of  
3 relicensure by the purchaser, remain unlicensed and unused for  
4 any long-term care service in the selling facility, whether they  
5 do or do not require a license;

6 (3) The beds purchased shall, for two years from the date  
7 of purchase, remain in the bed inventory attributed to the  
8 selling facility and be considered by the department of [social]  
9 health and senior services as licensed and available for purposes  
10 of this section;

11 (4) Any [residential care] facility licensed pursuant to  
12 chapter 198, RSMo, may relocate any portion of such facility's  
13 current licensed beds to any other facility to be licensed within  
14 the same licensure category if both facilities are under the same  
15 licensure ownership or control, and are located within six miles  
16 of each other;

17 (5) A facility licensed pursuant to chapter 198, RSMo, may  
18 transfer or sell individual long-term care licensed beds to  
19 facilities qualifying pursuant to paragraphs (a) and (b) of  
20 subdivision (1) of this subsection. Any facility which transfers  
21 or sells licensed beds shall not expand its licensed bed capacity  
22 in that licensure category for a period of five years from the  
23 date the licensure is relinquished.

24 9. Any existing licensed and operating health care facility

1 offering long-term care services may replace one-half of its  
2 licensed beds at the same site or a site not more than thirty  
3 miles from its current location if, for at least the most recent  
4 four consecutive calendar quarters, the facility operates only  
5 fifty percent of its then licensed capacity with every resident  
6 residing in a private room. In such case:

7 (1) The facility shall report to the [division of aging]  
8 department of health and senior services vacant beds as  
9 unavailable for occupancy for at least the most recent four  
10 consecutive calendar quarters;

11 (2) The replacement beds shall be built to private room  
12 specifications and only used for single occupancy; and

13 (3) The existing facility and proposed facility shall have  
14 the same owner or owners, regardless of corporate or business  
15 structure, and such owner or owners shall stipulate in writing  
16 that the existing facility beds to be replaced will not later be  
17 used to provide long-term care services. If the facility is  
18 being operated under a lease, both the lessee and the owner of  
19 the existing facility shall stipulate the same in writing.

20 10. Nothing in this section shall prohibit a health care  
21 facility licensed pursuant to chapter 198, RSMo, from being  
22 replaced in its entirety within fifteen miles of its existing  
23 site so long as the existing facility and proposed or replacement  
24 facility have the same owner or owners regardless of corporate or



1 business structure and the health care facility being replaced  
2 remains unlicensed and unused for any long-term care services  
3 whether they do or do not require a license from the date of  
4 licensure of the replacement facility.

5 197.340. 1. Any health facility providing a health service  
6 must notify the committee of any discontinuance of any previously  
7 provided health care service, a decrease in the number of  
8 licensed beds by ten percent or more, or the change in licensure  
9 category for any such facility.

10 2. Any health facility providing a health service shall  
11 notify the committee annually of the number of licensed beds that  
12 are unavailable. Beginning January 1, 2003, the committee shall  
13 collect for deposit in the general revenue fund an annual  
14 surcharge of one thousand dollars for each licensed but  
15 unavailable bed for health facilities licensed pursuant to  
16 chapter 198, RSMo. Such surcharge shall be applied only to the  
17 number of licensed but unavailable beds that exceed five percent  
18 of the total licensed beds owned by the facility, and shall be  
19 applied if a bed is classified as unavailable at anytime during  
20 the year.

21 197.370. 1. As used in this section, the term "continuing  
22 care retirement community" means:

23 (1) Housing planned and operated to provide a continuum of  
24 care for adults sixty-five years of age or older or couples one

1 of whom is sixty-five years of age or older requiring different  
2 levels of care to remain in the same location as their spouses or  
3 friends. This continuum of care shall include independent  
4 living, residential care I or residential care II and  
5 intermediate or skilled nursing care, defined as follows:

6 (a) "Independent living", a building or buildings or any  
7 group housing and services program, other than a skilled nursing  
8 facility, intermediate care facility, or residential care  
9 facility I or II for three or more unrelated adults that promotes  
10 resident self-direction and participation in decisions that  
11 emphasize choice, dignity, privacy, individuality, independence  
12 and home-like surroundings;

13 (b) "Intermediate care facility", as defined in section  
14 198.006, RSMo;

15 (c) "Residential care facility I" or "residential care  
16 facility II", as defined in section 198.006, RSMo; and

17 (d) "Skilled nursing care facility", as defined in section  
18 198.006, RSMo; and

19 (2) Independent living services provided through contracts  
20 which provide for such services for one year or more and may  
21 include entrance or endowment fees in addition to monthly  
22 charges.

23 2. Continuing care retirement communities, which contain in  
24 their certificate of need application plans which when completed

1 will consist of a minium of fifty independent living units and a  
2 minimum of thirty residential care facility beds and thirty  
3 skilled nursing facility beds and all facilities are located on  
4 contiguous property, shall be exempt from the requirements of  
5 sections 197.317 and 197.318 for the establishment or addition of  
6 long-term care beds.

7 3. Any licensed facility as defined in section 198.006,  
8 RSMo, which has been licensed for more than three years and has  
9 failed to achieve an occupancy level for the last six quarters of  
10 fifty-five percent or higher, shall relinquish to the certificate  
11 of need program the excess beds over sixty-five percent of  
12 licensed beds. The facility may regain these beds after  
13 obtaining a ninety percent occupancy on the remaining beds for  
14 six consecutive quarters. For purposes of this section, periods  
15 of major renovation affecting bed availability shall not be  
16 counted in the six quarters.

17 4. Any person who owns a continuing care retirement  
18 community as defined by this section may:

19 (1) Relocate beds to any other continuing care retirement  
20 community with mutual ownership; or

21 (2) Change the licensure category of beds and relocate them  
22 to any other continuing care retirement community with mutual  
23 ownership.

24 197.455. [The department may file an action in the circuit

1 court for the county in which any home health agency alleged to  
2 be violating the provisions of sections 197.400 to 197.475  
3 resides or may be found for an injunction to restrain the home  
4 health agency from continuing the violation.] An action may be  
5 brought by the department, or by the attorney general on his or  
6 her own volition or at the request of the department or any other  
7 appropriate state agency, to temporarily or permanently enjoin or  
8 restrain any violation of sections 197.400 to 197.477, to enjoin  
9 the acceptance of new clients until substantial compliance with  
10 sections 197.400 to 197.477 is achieved, or to enjoin any  
11 specific action or practice of the agency. Such action shall be  
12 brought in the circuit court for the county in which the agency  
13 is located. Any action brought pursuant to the provisions of  
14 this section shall be placed at the head of the docket by the  
15 court, and the court shall hold a hearing on any action brought  
16 pursuant to the provisions of this section no less than fifteen  
17 days after the filing of the action.

18 198.012. 1. The provisions of sections 198.003 to 198.136  
19 shall not apply to any of the following entities:

20 (1) Any hospital, facility or other entity operated by the  
21 state or the United States;

22 (2) Any facility or other entity otherwise licensed by the  
23 state and operating exclusively under such license and within the  
24 limits of such license, unless the activities and services are or

1 are held out as being activities or services normally provided by  
2 a licensed facility under sections 198.003 to 198.186, 198.200,  
3 208.030, and 208.159, RSMo, except hospitals licensed under the  
4 provisions of chapter 197, RSMo;

5 (3) Any hospital licensed under the provisions of chapter  
6 197, RSMo, provided that the residential care facility II,  
7 intermediate care facility or skilled nursing facility are  
8 physically attached to the acute care hospital; and provided  
9 further that the department of health and senior services in  
10 promulgating rules, regulations and standards pursuant to section  
11 197.080, RSMo, with respect to such facilities, shall establish  
12 requirements and standards for such hospitals consistent with the  
13 intent of this chapter, and sections 198.067, 198.070, 198.090,  
14 198.093 and 198.139 to 198.180 shall apply to every residential  
15 care facility II, intermediate care facility or skilled nursing  
16 facility regardless of physical proximity to any other health  
17 care facility;

18 (4) Any facility licensed pursuant to sections 630.705 to  
19 630.760, RSMo, which provides care, treatment, habilitation and  
20 rehabilitation exclusively to persons who have a primary  
21 diagnosis of mental disorder, mental illness, mental retardation  
22 or developmental disabilities, as defined in section 630.005,  
23 RSMo;

24 (5) Any provider of care under a life care contract, except

1 to any portion of the provider's premises on which the provider  
2 offers services provided by an intermediate care facility or  
3 skilled nursing facility as defined in section 198.006. For the  
4 purposes of this section, "provider of care under a life care  
5 contract" means any person contracting with any individual to  
6 furnish specified care and treatment to the individual for the  
7 life of the individual, with significant prepayment for such care  
8 and treatment;

9 (6) Any entity that:

10 (a) Has presented its operating model to the department of  
11 health and senior services or the department of social services  
12 prior to beginning operation;

13 (b) Has received a letter from the department confirming  
14 that no licensure or certification is required for such operating  
15 model;

16 (c) Continues to follow the model presented to the  
17 department; and

18 (d) Has received zoning or other governmental approval  
19 prior to April 20, 2001, for no more than two additional  
20 properties to be operated according to the previously approved  
21 model.

22 2. Nothing in this section shall prohibit any of these  
23 entities from applying for a license under sections 198.003 to  
24 198.136.

1       198.019. When the department of health and senior services  
2       issues a license for or renews the existing license of a  
3       facility, the department of health and senior services shall:

4       (1) Require all facility operators and owners, including  
5       part owners, to include in the application for licensure or  
6       renewal of licensure a list of all long-term care facilities,  
7       whether located in this state or another state, for which the  
8       operators and owners currently have or have had a financial  
9       interest, excluding the facility for which licensure or renewal  
10       of licensure is sought;

11       (2) Determine and consider the compliance history of the  
12       facilities listed in the application pursuant to subdivision (1)  
13       of this section as facilities for which the owners and operators  
14       have or have had a financial interest. The department, based on  
15       the review of such compliance history, may deny licensure or  
16       renewal of licensure for the facility;

17       (3) Consider the compliance history of the operator of the  
18       facility and the facility for which licensure or renewal of  
19       licensure is sought. The department, based on the review of such  
20       compliance history, may deny licensure or renewal of licensure  
21       for the facility; and

22       (4) Include and consider any facility responses to survey  
23       findings in the official review made by the department.

24       198.022. 1. Upon receipt of an application for a license

1 to operate a facility, the department shall review the  
2 application, investigate the applicant and the statements sworn  
3 to in the application for license and conduct any necessary  
4 inspections. A license shall be issued if the following  
5 requirements are met:

6 (1) The statements in the application are true and correct;

7 (2) The facility and the operator are in substantial  
8 compliance with the provisions of sections 198.003 to 198.096 and  
9 the standards established thereunder;

10 (3) The applicant has the financial capacity to operate the  
11 facility;

12 (4) The administrator of a residential care facility II, a  
13 skilled nursing facility, or an intermediate care facility is  
14 currently licensed under the provisions of chapter 344, RSMo;

15 (5) Neither the operator nor any principals in the  
16 operation of the facility have ever been convicted of a felony  
17 offense concerning the operation of a long-term health care  
18 facility or other health care facility or ever knowingly acted or  
19 knowingly failed to perform any duty which materially and  
20 adversely affected the health, safety, welfare or property of a  
21 resident, while acting in a management capacity. The operator of  
22 the facility or any principal in the operation of the facility  
23 shall not be under exclusion from participation in the title  
24 XVIII (Medicare) or title XIX (Medicaid) program of any state or



1 territory;

2 (6) Neither the operator nor any principals involved in the  
3 operation of the facility have ever been convicted of a felony in  
4 any state or federal court arising out of conduct involving  
5 either management of a long-term care facility or the provision  
6 or receipt of health care;

7 (7) All fees due to the state have been paid.

8 2. Upon denial of any application for a license, the  
9 department shall so notify the applicant in writing, setting  
10 forth therein the reasons and grounds for denial.

11 3. The department may inspect any facility and any records  
12 and may make copies of records, at the facility, at the  
13 department's own expense, required to be maintained by sections  
14 198.003 to 198.096 or by the rules and regulations promulgated  
15 thereunder at any time if a license has been issued to or an  
16 application for a license has been filed by the operator of such  
17 facility. Except as otherwise provided for in section 198.526,  
18 the department shall make at least two inspections per year, at  
19 least one of which shall be unannounced to the operator. The  
20 department may make such other inspections, announced or  
21 unannounced, as it deems necessary to carry out the provisions of  
22 sections 198.003 to 198.136.

23 4. Whenever the department has reasonable grounds to  
24 believe that a facility required to be licensed under sections

1 198.003 to 198.096 is operating without a license, and the  
2 department is not permitted access to inspect the facility, or  
3 when a licensed operator refuses to permit access to the  
4 department to inspect the facility, the department shall apply to  
5 the circuit court of the county in which the premises is located  
6 for an order authorizing entry for such inspection, and the court  
7 shall issue the order if it finds reasonable grounds for  
8 inspection or if it finds that a licensed operator has refused to  
9 permit the department access to inspect the facility.

10 198.026. 1. Whenever a duly authorized representative of  
11 the department finds upon an inspection of a facility that it is  
12 not in compliance with the provisions of sections 198.003 to  
13 198.096 and the standards established thereunder, the operator or  
14 administrator shall be informed of the deficiencies in an exit  
15 interview conducted with the operator or administrator or his  
16 designee. The department shall inform the operator or  
17 administrator, in writing, of any violation of a class I standard  
18 at the time the determination is made. A written report shall be  
19 prepared of any deficiency for which there has not been prompt  
20 remedial action, and a copy of such report and a written  
21 correction order shall be sent to the operator or administrator  
22 by certified mail or other delivery service that provides a dated  
23 receipt of delivery at the facility address within ten working  
24 days after the inspection, stating separately each deficiency and

1 the specific statute or regulation violated.

2 2. The operator or administrator shall have five working  
3 days following receipt of a written report and correction order  
4 regarding a violation of a class I standard and ten working days  
5 following receipt of the report and correction order regarding  
6 violations of class II or class III standards to request any  
7 conference and to submit a plan of correction for the  
8 department's approval which contains specific dates for achieving  
9 compliance. Within five working days after receiving a plan of  
10 correction regarding a violation of a class I standard and within  
11 ten working days after receiving a plan of correction regarding a  
12 violation of a class II or III standard, the department shall  
13 give its written approval or rejection of the plan. If there was  
14 a violation of any class I standard, immediate corrective action  
15 shall be taken by the operator or administrator and a written  
16 plan of correction shall be submitted to the department. The  
17 department shall give its written approval or rejection of the  
18 plan and if the plan is acceptable, a reinspection shall be  
19 conducted within twenty calendar days of the exit interview to  
20 determine if deficiencies have been corrected. If there was a  
21 violation of any class II standard and the plan of correction is  
22 acceptable, an unannounced reinspection shall be conducted  
23 between forty and ninety calendar days from the date of the exit  
24 conference to determine the status of all previously cited

1 deficiencies. If there was a violation of class III standards  
2 sufficient to establish that the facility was not in substantial  
3 compliance, an unannounced reinspection shall be conducted within  
4 one hundred twenty days of the exit interview to determine the  
5 status of previously identified deficiencies.

6 3. For any violation or deficiency resulting in a notice of  
7 noncompliance and involving staffing issues directly related to  
8 patient care, the department may direct a facility to implement  
9 corrective actions relating to staffing, including but not  
10 limited to qualifications of staff, staffing ratios, training  
11 plans or plans for staff supervision. Such decision may be  
12 appealed to the administrative hearing commission; except that  
13 the commission shall not have the authority to stay the effect of  
14 the order pending final resolution of the case.

15 4. If, following the reinspection, the facility is found  
16 not in substantial compliance with sections 198.003 to 198.096  
17 and the standards established thereunder or the operator is not  
18 correcting the noncompliance in accordance with the approved plan  
19 of correction, the department shall issue a notice of  
20 noncompliance, which shall be sent by certified mail or other  
21 delivery service that provides a dated receipt of delivery to  
22 each person disclosed to be an owner or operator of the facility,  
23 according to the most recent information or documents on file  
24 with the department.

1           [4.] 5. The notice of noncompliance shall inform the  
2 operator or administrator that the department may seek the  
3 imposition of any of the sanctions and remedies provided for in  
4 section 198.067, or any other action authorized by law.

5           [5.] 6. At any time after an inspection is conducted, the  
6 operator may choose to enter into a consent agreement with the  
7 department to obtain a probationary license. The consent  
8 agreement shall include a provision that the operator will  
9 voluntarily surrender the license if substantial compliance is  
10 not reached in accordance with the terms and deadlines  
11 established under the agreement. The agreement shall specify the  
12 stages, actions and time span to achieve substantial compliance.

13           [6.] 7. Whenever a notice of noncompliance has been issued,  
14 the operator shall post a copy of the notice of noncompliance and  
15 a copy of the most recent inspection report in a conspicuous  
16 location in the facility, and the department shall send a copy of  
17 the notice of noncompliance to the division of family services of  
18 the department of social services, the department of mental  
19 health, and any other concerned federal, state or local  
20 governmental agencies.

21           198.029. The provisions of section 198.026 notwithstanding,  
22 whenever a duly authorized representative of the department finds  
23 upon inspection of a licensed facility, and the director of the  
24 department finds upon review, that the facility or the operator

1 is not in substantial compliance with a standard or standards the  
2 violations of which would present either an imminent danger to  
3 the health, safety or welfare of any resident or a substantial  
4 probability that death or serious physical harm would result and  
5 which is not immediately corrected, the department shall:

6 (1) Give immediate written notice of the noncompliance to  
7 the operator, administrator or person managing or supervising the  
8 conduct of the facility and a copy of such notice to the attorney  
9 general at the time the noncompliance is found;

10 (2) Make public the fact that a notice of noncompliance has  
11 been issued to the facility. Copies of the notice shall be sent  
12 to appropriate hospitals and social service agencies and members  
13 of the general assembly representing the facility;

14 (3) Send a copy of the notice of noncompliance to the  
15 division of family services of the department of social services,  
16 the department of mental health, and any other concerned federal,  
17 state or local government agencies. The facility shall post in a  
18 conspicuous location in the facility a copy of the notice of  
19 noncompliance and a copy of the most recent inspection report.

20 198.030. Notwithstanding any other law to the contrary,  
21 every residential care facility I and residential care facility  
22 II shall meet or exceed the federal requirements relating to the  
23 posting of deficiencies for federally certified skilled nursing  
24 facilities and intermediate care facilities.

1           198.032. 1. Nothing contained in sections 198.003 to  
2           198.186 shall permit the public disclosure by the department of  
3           confidential medical, social, personal or financial records of  
4           any resident in any facility, except when disclosed in a manner  
5           which does not identify any resident, or when ordered to do so by  
6           a court of competent jurisdiction. Such records shall be  
7           accessible without court order for examination and copying only  
8           to the following persons or offices, or to their designees:

9           (1) The department or any person or agency designated by  
10          the department;

11          (2) The attorney general;

12          (3) The department of mental health for residents placed  
13          to, from, or through that department;

14          (4) Any appropriate law enforcement agency;

15          (5) The resident, [his] the resident's guardian or  
16          conservator, or any other person designated by the resident; and

17          (6) Appropriate committees of the general assembly and the  
18          state auditor, but only to the extent of financial records which  
19          the operator is required to maintain pursuant to sections 198.088  
20          and 198.090.

21          2. Inspection reports and written reports of investigations  
22          of complaints, of substantiated reports of abuse and neglect  
23          received in accordance with section 198.070, and complaints  
24          received by the department relating to the quality of care of

1 facility residents, shall be accessible to the public for  
2 examination and copying, provided that such reports are disclosed  
3 in a manner which does not identify the complainant or any  
4 particular resident. Records and reports shall clearly show what  
5 steps the department and the institution are taking to resolve  
6 problems indicated in said inspections, reports and complaints.

7 Unsubstantiated inspection reports, and written reports of  
8 investigations of complaints shall not be used by insurance  
9 carriers for purposes of insurance underwriting.

10 3. The department shall maintain a central registry capable  
11 of receiving and maintaining reports received in a manner that  
12 facilitates rapid access and recall of the information reported,  
13 and of subsequent investigations and other relevant information.  
14 The department shall electronically record any telephone report  
15 of suspected abuse and neglect received by the department and  
16 such recorded reports shall be retained by the department for a  
17 period of one year after recording.

18 4. Although reports to the central registry may be made  
19 anonymously, the department shall in all cases, after obtaining  
20 relevant information regarding the alleged abuse or neglect,  
21 attempt to obtain the name and address of any person making a  
22 report.

23 198.036. 1. The department may revoke a license in any  
24 case in which it finds that the operator:



1           (1) Failed or refused to comply with class I or II  
2 standards, as established by the department pursuant to section  
3 198.085 or where the operator was cited for failure to comply  
4 with a particular class I standard on two different occasions  
5 within a twenty-four month period; or failed or refused to comply  
6 with class III standards as established by the department  
7 pursuant to section 198.085, where the aggregate effect of such  
8 noncompliances presents either an imminent danger to the health,  
9 safety or welfare of any resident or a substantial probability  
10 that death or serious physical harm would result;

11           (2) Refused to allow representatives of the department to  
12 inspect the facility for compliance with standards;

13           (3) Knowingly acted or knowingly omitted any duty in a  
14 manner which would materially and adversely affect the health,  
15 safety, welfare or property of a resident; or

16           (4) Demonstrated financial incapacity to operate and  
17 conduct the facility in accordance with the provisions of  
18 sections 198.003 to 198.096.

19           2. Upon revocation of a license, the director of the  
20 department shall so notify the operator in writing, setting forth  
21 the reason and grounds for the revocation. Notice of such  
22 revocation shall be sent either by certified mail, return receipt  
23 requested, to the operator at the address of the facility, or  
24 served personally upon the operator. The department shall

1 provide the operator notice of such revocation at least ten days  
2 prior to its effective date.

3 198.039. 1. Any person aggrieved by an official action of  
4 the department either refusing to issue a license or revoking a  
5 license may seek a determination thereon by the administrative  
6 hearing commission pursuant to the provisions of section 621.045,  
7 RSMo, et seq., except that the petition must be filed with the  
8 administrative hearing commission within fifteen days after the  
9 mailing or delivery of notice to the operator. It shall not be a  
10 condition to such determination that the person aggrieved seek a  
11 reconsideration, a rehearing or exhaust any other procedure  
12 within the department.

13 2. The administrative hearing commission may stay the  
14 revocation of such license, pending the commission's findings and  
15 determination in the cause, upon such conditions, with or without  
16 the agreement of the parties, as the commission deems necessary  
17 and appropriate including the posting of bond or other security  
18 except that the commission shall not grant a stay or if a stay  
19 has already been entered shall set aside its stay, [if upon  
20 application of the department] unless the commission finds that  
21 the facility operator has established reason to believe that  
22 continued operation of a facility pending the commission's final  
23 determination would not present an imminent danger to the health,  
24 safety or welfare of any resident or a substantial probability

1 that death or serious physical harm would result. In such cases,  
2 the burden of going forward with the evidence as well as the  
3 ultimate burden of persuasion is upon the facility. In any case  
4 in which the department has refused to issue a license, the  
5 commission shall have no authority to stay or to require the  
6 issuance of a license pending final determination by the  
7 commission.

8 3. The administrative hearing commission shall make the  
9 final decision as to the issuance or revocation of a license  
10 based upon the circumstances and conditions as they existed at  
11 the time of the alleged deficiencies and not based upon  
12 circumstances and conditions after the time of the decision not  
13 to issue or revoke a license. Any person aggrieved by a final  
14 decision of the administrative hearing commission, including the  
15 department, may seek judicial review of such decision by filing a  
16 petition for review in the court of appeals for the district in  
17 which the facility is located. Review shall be had, except as  
18 modified herein, in accordance with the provisions of sections  
19 621.189 and 621.193, RSMo.

20 198.046. If a skilled nursing facility that has a private-  
21 pay certificate of need exemption has a private-pay resident who  
22 becomes eligible for Medicaid reimbursement after residing in the  
23 facility for a period in excess of one year, the facility may  
24 receive Medicaid reimbursement on behalf of such eligible

1 individual without meeting the requirements of sections 197.300  
2 to 197.366, RSMo, for up to ten percent of the facilities  
3 licensed beds.

4 198.067. 1. An action may be brought by the department, or  
5 by the attorney general on his or her own volition or at the  
6 request of the department or any other appropriate state agency,  
7 to temporarily or permanently enjoin or restrain any violation of  
8 sections 198.003 to 198.096, to enjoin the acceptance of new  
9 residents until substantial compliance with sections 198.003 to  
10 198.096 is achieved, or to enjoin any specific action or practice  
11 of the facility. Any action brought pursuant to the provisions  
12 of this section shall be placed at the head of the docket by the  
13 court, and the court shall hold a hearing on any action brought  
14 pursuant to the provisions of this section no [less] later than  
15 fifteen days after the filing of the action.

16 2. The department or attorney general may bring an action  
17 in circuit court to recover a civil penalty against the licensed  
18 operator of the facility as provided by this section. Such  
19 action shall be brought in the circuit court for the county in  
20 which the facility is located. The circuit court shall determine  
21 the amount of penalty to be assessed within the limits set out in  
22 this section. Appeals may be taken from the judgment of the  
23 circuit court as in other civil cases.

24 3. The operator of any facility which has been cited with a

1 violation of sections 198.003 to 198.096 or the regulations  
2 established pursuant thereto, or of subsection (b), (c), or (d)  
3 of Section 1396r of Title 42 of the United States Code or the  
4 regulations established pursuant thereto, is liable to the state  
5 for civil penalties of up to ten thousand dollars for each day  
6 that the violations existed or continue to exist, regardless of  
7 whether they are later corrected. Violations shall be presumed  
8 to continue to exist from the time they are found until the time  
9 the [division of aging] department finds them to have been  
10 corrected. The amount of the penalty shall be determined as  
11 follows:

12 (1) For each violation of a class I standard, not less than  
13 one hundred fifty dollars nor more than one thousand dollars;

14 (2) For each violation of a class II standard, not less  
15 than fifty dollars nor more than five hundred dollars;

16 (3) For each violation of a class III standard, not less  
17 than fifteen dollars nor more than one hundred fifty dollars;

18 (4) For each violation of a federal standard which does not  
19 also constitute a violation of a state law or regulation, not  
20 less than two hundred fifty dollars nor more than five hundred  
21 dollars;

22 (5) For each specific class I violation by the same  
23 operator which has been cited previously within the past  
24 twenty-four months and for each specific class II or III

1 violation by the same operator which has been cited previously  
2 within the past twelve months, double the amount last imposed.

3 As used in this [subdivision] subsection the term "violation"  
4 shall mean a breach of a specific state or federal standard or  
5 statute which remains uncorrected and not in accord with the  
6 accepted plan of correction at the time of the reinspection  
7 conducted pursuant to subsection 3 of section 198.026 or the  
8 regulations established pursuant to Title 42 of the United States  
9 Code. A judgment rendered against the operator of a facility  
10 pursuant to this subsection shall bear interest as provided in  
11 subsection 1 of section 408.040, RSMo.

12 4. Any individual who willfully and knowingly certifies  
13 pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42  
14 of the United States Code a material and false statement in a  
15 resident assessment is subject to a civil penalty of not more  
16 than one thousand dollars with respect to each assessment. Any  
17 individual who willfully and knowingly causes another individual  
18 to certify pursuant to subsection (b)(3)(B)(i) of Section 1396r  
19 of Title 42 of the United States Code a material and false  
20 statement in a resident assessment is subject to a civil penalty  
21 of not more than five thousand dollars with respect to each  
22 assessment.

23 5. The imposition of any remedy provided for in sections

1 198.003 to 198.186 shall not bar the imposition of any other  
2 remedy.

3 6. Penalties collected pursuant to this section shall be  
4 deposited in the [division of aging] elderly home-delivered meals  
5 trust fund as established in section 660.078, RSMo. Such  
6 penalties shall not be considered a charitable contribution for  
7 tax purposes.

8 7. To recover any civil penalty, the moving party shall  
9 prove by clear and convincing evidence that the violation  
10 occurred.

11 8. The licensed operator of a facility against whom an  
12 action to recover a civil penalty is brought pursuant to this  
13 section may confess judgment as provided in section 511.070,  
14 RSMo, at any time prior to hearing. If such licensed operator  
15 agrees to confess judgment, the amount of the civil penalty  
16 recommended by the moving party in its petition shall be reduced  
17 by twenty-five percent and the confessed judgment shall be  
18 entered by the circuit court at the reduced amount.

19 9. The amount of any civil penalty assessed by the circuit  
20 court pursuant to this section [shall] may be reduced by the  
21 amount of any civil monetary penalty which the licensed operator  
22 of the facility may establish it has paid pursuant to the laws of  
23 the United States for the breach of the same federal standards  
24 and arising out of the same conduct for which the state action is

1 brought.

2 10. In addition to the civil penalties specified in  
3 subdivision (1) of subsection 3 of this section, any facility  
4 which is cited with a violation of a class I standard pursuant to  
5 subsection 1 of section 198.085, when such violation results in  
6 serious physical injury or abuse of a sexual nature pursuant to  
7 subdivision (1) of section 198.006, to any resident of that  
8 facility shall be liable to the state for a civil penalty of one  
9 hundred dollars multiplied by the number of beds licensed to the  
10 facility, up to a maximum of ten thousand dollars pursuant to  
11 subsections 1 and 2 of this section. The liability of the  
12 facility for civil penalties pursuant to this section shall be  
13 incurred immediately upon the citation of the violation and shall  
14 not be affected by any subsequent correction of the violation.  
15 For the purposes of this section, "serious physical injury" means  
16 physical injury that creates a substantial risk of death or that  
17 causes serious disfigurement or protracted loss or impairment of  
18 the function of any part of the body.

19 198.068. In accordance with the provisions of section  
20 198.067, the general assembly specifically intends for the civil  
21 penalties in section 198.067 to be imposed in cases where there  
22 has been more than one violation or a pattern of violations,  
23 regardless of any subsequent correction of the violation by a  
24 facility.



1           198.070. 1. When any physician, dentist, chiropractor,  
2           optometrist, podiatrist, [intern,] nurse, nurse practitioner,  
3           physician's assistant, medical examiner, social worker,  
4           psychologist, minister, Christian Science practitioner, peace  
5           officer, pharmacist, physical therapist, facility administrator  
6           or owner, employee in a facility, or employee of the department  
7           of social services, the department of health and senior services,  
8           or of the department of mental health, coroner, [dentist,]  
9           hospital and clinic personnel engaged in examination, care or  
10          treatment of persons, other health practitioners, mental health  
11          professional, adult day care worker, probation or parole officer,  
12          law enforcement official or other person with the care of [a  
13          person sixty years of age or older or] an eligible adult as  
14          defined in section 660.250, RSMo, has reasonable cause to believe  
15          that a resident of a facility has been abused or neglected, he or  
16          she shall immediately report or cause a report to be made to the  
17          department.

18               2. The report shall contain the name and address of the  
19               facility, the name of the resident, information regarding the  
20               nature of the abuse or neglect, the name of the complainant, and  
21               any other information which might be helpful in an investigation.

22               3. Any person required in subsection 1 of this section to  
23               report or cause a report to be made to the department who  
24               knowingly fails to make a report within a reasonable time after

1 the act of abuse or neglect as required in this subsection is  
2 guilty of a class A misdemeanor.

3 4. In addition to those persons required to report pursuant  
4 to subsection 1 of this section, any other person having  
5 reasonable cause to believe that a resident has been abused or  
6 neglected may report such information to the department.

7 5. Upon receipt of a report, the department shall initiate  
8 an investigation within twenty-four hours and, as soon as  
9 possible during the course of the investigation, shall notify the  
10 resident's next of kin or responsible party of the report and the  
11 investigation and further notify them whether the report was  
12 substantiated or unsubstantiated. As provided in section  
13 565.186, RSMo, substantiated reports of elder abuse shall be  
14 promptly reported by the department to the appropriate law  
15 enforcement agency and prosecutor.

16 6. If the investigation indicates possible abuse or neglect  
17 of a resident, the investigator shall refer the complaint  
18 together with the investigator's report to the department  
19 director or the director's designee for appropriate action. If,  
20 during the investigation or at its completion, the department has  
21 reasonable cause to believe that immediate removal is necessary  
22 to protect the resident from abuse or neglect, the department or  
23 the local prosecuting attorney may, or the attorney general upon  
24 request of the department shall, file a petition for temporary

1 care and protection of the resident in a circuit court of  
2 competent jurisdiction. The circuit court in which the petition  
3 is filed shall have equitable jurisdiction to issue an ex parte  
4 order granting the department authority for the temporary care  
5 and protection of the resident, for a period not to exceed thirty  
6 days.

7 7. Reports shall be confidential, as provided pursuant to  
8 section 660.320, RSMo.

9 8. Anyone who makes a report pursuant to this section or  
10 who testifies in any administrative or judicial proceeding  
11 arising from the report shall be immune from any civil or  
12 criminal liability for making such a report or for testifying  
13 except for liability for perjury, unless such person acted in bad  
14 faith or with malicious purpose. It is a crime pursuant to  
15 section 565.186 and 565.188, RSMo, for any person to purposely  
16 file a false report of elder abuse or neglect.

17 9. Within five working days after a report required to be  
18 made pursuant to this section is received, the person making the  
19 report shall be notified in writing of its receipt and of the  
20 initiation of the investigation.

21 10. No person who directs or exercises any authority in a  
22 facility shall evict, harass, dismiss or retaliate against a  
23 resident or employee because such resident or employee or any  
24 member of such resident's or employee's family has made a report

1 of any violation or suspected violation of laws, ordinances or  
2 regulations applying to the facility which the resident, the  
3 resident's family or an employee has reasonable cause to believe  
4 has been committed or has occurred. Through the existing  
5 division of aging information and referral telephone contact  
6 line, residents, their families and employees of a facility shall  
7 be able to obtain information about their rights, protections and  
8 options in cases of eviction, harassment, dismissal or  
9 retaliation due to a report being made pursuant to this section.

10 11. Any person who knowingly abuses or neglects a resident  
11 of a facility shall be guilty of a class D felony.

12 12. The department shall maintain the employee  
13 disqualification list and place on the employee disqualification  
14 list the names of any persons who have been finally determined by  
15 the department pursuant to section 660.315, RSMo, to have  
16 recklessly, knowingly or purposely abused or neglected a resident  
17 while employed in any facility.

18 13. The timely self-reporting of incidents to the central  
19 registry by a facility shall continue to be investigated in  
20 accordance with department policy, and shall not be counted or  
21 reported by the department as a hot- line call but rather a  
22 self-reported incident. If the self-reported incident results in  
23 a regulatory violation, such incident shall be reported as a  
24 substantiated report.

1           198.073. 1. [Except as provided in subsection 3 of this  
2 section, a residential care facility II or residential care  
3 facility I shall admit or retain only those persons who are  
4 capable mentally and physically of negotiating a normal path to  
5 safety using assistive devices or aids when necessary, and who  
6 may need assisted personal care within the limitations of such  
7 facilities, and who do not require hospitalization or skilled  
8 nursing care.] An individual may be accepted for residency in a  
9 residential care facility I or residential care facility II or  
10 remain in residence if the facility:

11           (1) Provides for or secures appropriate services to meet  
12 the scheduled and unscheduled needs of the resident; and

13           (2) Has twenty-four hour staff appropriate in numbers and  
14 with appropriate skills to provide such services and upkeep of  
15 the facility; and

16           (3) Has a written plan, approved by the local fire  
17 department, for the protection of all residents in the event of  
18 disasters. Such plan may include keeping residents in place,  
19 evacuating residents to areas of refuge, evacuating residents  
20 from the building when necessary, or other methods of protection  
21 based on the emergency and the individual building design; and

22           (4) Has written verification signed by the resident, or a  
23 family member or legal representative of the resident, the  
24 resident's physician, and the facility representative stating how

1 the facility will meet the scheduled and unscheduled needs of the  
2 resident.

3 2. Notwithstanding the provisions of subsection 3 of this  
4 section, those persons previously qualified for residence who may  
5 have a temporary period of incapacity due to illness, surgery, or  
6 injury, which period does not exceed forty-five days, may be  
7 allowed to remain in a residential care facility II or  
8 residential care facility I if approved by a physician.

9 3. A residential care facility II may admit or continue to  
10 care for [those persons who are physically capable of negotiating  
11 a normal path to safety using assistive devices or aids when  
12 necessary but are mentally incapable of negotiating such a path  
13 to safety that have been diagnosed with Alzheimer's disease or  
14 Alzheimer's related dementia] individuals with dementia who  
15 require assistance in order to evacuate in the event of a  
16 disaster, if the following requirements are met:

17 (1) [A family member or legal representative of the  
18 resident, in consultation with the resident's primary physician  
19 and the facility, determines that the facility can meet the needs  
20 of the resident. The facility shall document the decision  
21 regarding continued placement in the facility through written  
22 verification by the family member, physician and the facility  
23 representative;

24 (2)] The facility is equipped with an automatic sprinkler

1 system, in compliance with National Fire Protection Association  
2 Code 13 or National Fire Protection Association Code 13R, and an  
3 automated fire door system and smoke alarms in compliance with  
4 13-3.4 of the [1997] 2000 Life Safety Codes for Existing Health  
5 Care Occupancy;

6 [(3) In a multilevel facility, residents who are mentally  
7 incapable of negotiating a pathway to safety are housed only on  
8 the ground floor;

9 (4)] (2) The facility shall take necessary measures to  
10 provide residents with the opportunity to explore the facility  
11 and, if appropriate, its grounds;

12 [(5) The facility shall be staffed twenty-four hours a day  
13 by the appropriate number and type of personnel necessary for the  
14 proper care of residents and upkeep of the facility.];

15 (3) In meeting [such] staffing requirements, every resident  
16 [who is mentally incapable of negotiating a pathway to safety]  
17 with dementia who requires assistance in order to evacuate in the  
18 event of a disaster shall count as three residents. All on-duty  
19 staff of the facility shall, at all times, be awake, dressed and  
20 prepared to assist residents in case of emergency;

21 [(6)] (4) Every resident [mentally incapable of negotiating  
22 a pathway to safety in the facility] with dementia who requires  
23 assistance in order to evacuate in the event of disaster shall be  
24 assessed by a licensed professional, as defined in sections

1 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337,  
2 RSMo, with an assessment [instrument utilized by the division of  
3 aging known as the minimum data set used for assessing residents  
4 of skilled nursing facilities] tool for community-based services  
5 for persons with dementia determined by the department:

6 (a) Upon admission;

7 (b) At least semiannually; and

8 (c) When a significant change has occurred in the  
9 resident's condition which may require additional services;

10 [(7)] (5) Based on the assessment in subdivision [(6)] (4)  
11 of this subsection, a licensed professional, as defined in  
12 sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter  
13 337, RSMo, shall develop an individualized service plan for every  
14 resident [who is mentally incapable of negotiating a pathway to  
15 safety] with dementia who requires assistance in order to  
16 evacuate in the event of a disaster. Such service plan must  
17 include an evacuation plan for the resident. The service plan  
18 shall be reviewed annually with the resident, the resident's  
19 legal representative or the resident's family. Such  
20 individualized service plan shall be implemented by the  
21 facility's staff to meet the specific needs of the resident;

22 [(8)] (6) Every facility shall use a personal electronic  
23 monitoring device for any resident whose physician recommends the  
24 use of such device;



1           [(9) All facility personnel who will provide direct care to  
2 residents who are mentally incapable of negotiating a pathway to  
3 safety shall receive at least twenty-four hours of training  
4 within the first thirty days of employment. At least twelve  
5 hours of such training shall be classroom instruction, with six  
6 classroom instruction hours and two on-the-job training hours  
7 related to the special needs, care and safety of residents with  
8 dementia;

9           (10) All personnel of the facility, regardless of whether  
10 such personnel provides direct care to residents who cannot  
11 negotiate a pathway to safety, shall receive on a quarterly basis  
12 at least four hours of in- service training, with at least two  
13 such hours relating to the care and safety of residents who are  
14 mentally incapable of negotiating a pathway to safety;

15           (11)] (7) The facility shall comply with the training  
16 requirements pursuant to subdivisions (1) and (2) of subsection 8  
17 of section 660.050, RSMo;

18           (8) Every facility shall make available and implement  
19 self-care, productive and leisure activity programs for persons  
20 with dementia which maximize and encourage the resident's optimal  
21 functional ability;

22           [(12)] (9) Every facility shall develop and implement a  
23 plan to protect the rights, privacy and safety of all residents  
24 and to prevent the financial exploitation of all residents\_[]; and

1           (13) A licensee of any licensed residential care facility  
2 or any residential care facility shall ensure that its facility  
3 does not accept or retain a resident who is mentally incapable of  
4 negotiating a normal pathway to safety using assistive devices  
5 and aids that:

6           (a) Has exhibited behaviors which indicate such resident is  
7 a danger to self or others;

8           (b) Is at constant risk of elopement;

9           (c) Requires physical restraint;

10          (d) Requires chemical restraint. As used in this  
11 subdivision, the following terms mean:

12          a. "Chemical restraint", a psychopharmacologic drug that is  
13 used for discipline or convenience and not required to treat  
14 medical symptoms;

15          b. "Convenience", any action taken by the facility to  
16 control resident behavior or maintain residents with a lesser  
17 amount of effort by the facility and not in the resident's best  
18 interests;

19          c. "Discipline", any action taken by the facility for the  
20 purpose of punishing or penalizing residents;

21          (e) Requires skilled nursing services as defined in  
22 subdivision (17) of section 198.003 for which the facility is not  
23 licensed or able to provide;

24          (f) Requires more than one person to simultaneously

1 physically assist the resident with any activity of daily living,  
2 with the exception of bathing;

3 (g) Is bed-bound or chair-bound due to a debilitating or  
4 chronic condition.

5 4. The facility shall not care for any person unless such  
6 facility is able to provide appropriate services for and meet the  
7 needs of such person.

8 5.] 4. Nothing in this chapter shall prevent a facility  
9 from discharging a resident who is a danger to himself or  
10 herself, or to others.

11 [6. The training requirements established in subdivisions  
12 (9) and (10) of subsection 3 of this section shall fully satisfy  
13 the training requirements for the program described in  
14 subdivision (18) of subsection 1 of section 208.152, RSMo.

15 7. The division of aging] 5. The department shall  
16 promulgate rules to ensure compliance with this section and to  
17 sanction facilities that fail to comply with this section. Any  
18 rule or portion of a rule, as that term is defined in section  
19 536.010, RSMo, that is created under the authority delegated in  
20 this section shall become effective only if it complies with and  
21 is subject to all of the provisions of chapter 536, RSMo, and, if  
22 applicable, section 536.028, RSMo. This section and chapter 536,  
23 RSMo, are nonseverable and if any of the powers vested with the  
24 general assembly pursuant to chapter 536, RSMo, to review, to

1 delay the effective date or to disapprove and annul a rule are  
2 subsequently held unconstitutional, then the grant of rulemaking  
3 authority and any rule proposed or adopted after August 28, 1999,  
4 shall be invalid and void.

5 6. As used in this section, the term "dementia" means a  
6 general term for the loss of thinking, remembering, and reasoning  
7 so severe that it interferes with an individual's daily  
8 functioning. Symptoms may also include changes in personality,  
9 mood, and behavior. Dementia is irreversible when caused by  
10 disease or injury but may be reversible when related to  
11 depression, drug interaction, thyroid, vitamin, or nutrition  
12 imbalances.

13 198.074. 1. Long term care facilities, adult day care  
14 facilities, residential care facilities I and residential care  
15 facilities II shall make immunizations for influenza and  
16 pneumonia available to residents sixty-five years of age or  
17 older, on-site on a yearly basis or upon admission. Written  
18 consent for such immunizations shall be given by the resident and  
19 his or her physician. The department shall prescribe by rule,  
20 the manner by which such facilities shall document compliance  
21 with this section, including documenting residents who refuse to  
22 be immunized. The department shall not impose a violation on a  
23 licensee for not making an immunization available if there is a  
24 shortage of that immunization in this state as determined by the

1 director of the department of health and senior services.

2 2. Any rule or portion of a rule, as that term is defined  
3 in section 536.010, RSMo, that is created under the authority  
4 delegated in this section shall become effective only if it  
5 complies with and is subject to all of the provisions of chapter  
6 536, RSMo, and, if applicable, section 536.028, RSMo. This  
7 section and chapter 536, RSMo, are nonseverable and if any of the  
8 powers vested with the general assembly pursuant to chapter 536,  
9 RSMo, to review, to delay the effective date or to disapprove and  
10 annul a rule are subsequently held unconstitutional, then the  
11 grant of rulemaking authority and any rule proposed or adopted  
12 after August 28, 2002, shall be invalid and void.

13 198.080. [The division of aging shall develop flexible  
14 assessment procedures for individuals in long-term care and those  
15 considering long- term care services which follow the individual  
16 through the continuum of care, including periodic reassessment.  
17 By January 1, 2002, the division of aging shall promulgate rules  
18 and regulations to implement the new assessment system and shall  
19 make a report to the appropriate house and senate committees of  
20 the general assembly regarding the new assessment system. Any  
21 rule or portion of a rule, as that term is defined in section  
22 536.010, RSMo, that is created under the authority delegated in  
23 this section shall become effective only if it complies with and  
24 is subject to all of the provisions of chapter 536, RSMo, and, if

1 applicable, section 536.028, RSMo. This section and chapter 536,  
2 RSMo, are nonseverable and if any of the powers vested with the  
3 general assembly pursuant to chapter 536, RSMo, to review, to  
4 delay the effective date or to disapprove and annul a rule are  
5 subsequently held unconstitutional, then the grant of rulemaking  
6 authority and any rule proposed or adopted after August 28, 1999,  
7 shall be invalid and void.] The departments of health and senior  
8 services, social services, mental health, and elementary and  
9 secondary education shall work together to compare and evaluate  
10 their assessment procedures for individuals receiving long-term  
11 care services and those individuals considering long-term care  
12 services. Assessment procedures that are used for eligibility,  
13 care needs determination, placement, and funding of care shall be  
14 compared and evaluated. Following such evaluation, the  
15 departments shall work together to make changes in the  
16 assessments procedures utilized by each department to provide  
17 uniformity and equity of services so the care needs of  
18 individuals are met regardless of the program or department  
19 providing services and funding. The assessment of individuals  
20 with long-term care needs shall include, but is not limited to,  
21 the following:

22 (1) A comprehensive assessment of the individual's care  
23 needs and whether such needs are met or unmet; and

24 (2) An assessment of the individual's cognitive ability and

1 the supports they would need to perform activities of daily  
2 living on a day-to-day basis; and

3 (3) An evaluation of the individual's support system in the  
4 community that could enable the individual to live in a community  
5 setting instead of an institution if the individual desires to be  
6 in a community setting; and

7 (4) Periodic reassessment of the individual's health, care  
8 needs, and support system.

9 198.082. 1. Each nursing assistant hired to work in a  
10 skilled nursing or intermediate care facility after January 1,  
11 1980, shall have successfully completed a nursing assistant  
12 training program approved by the department [or shall enroll in  
13 and begin the first available approved training program which is  
14 scheduled to commence within ninety days of the date of the  
15 nursing assistant's employment] which shall be completed within  
16 one hundred twenty days of employment. Training programs shall  
17 be offered at a location most reasonably accessible to the  
18 enrollees in each class. The program may be established and  
19 carried out by the skilled nursing or intermediate care facility  
20 so long as that facility has not been cited for any class I  
21 violation within the past twenty-four months, by a professional  
22 organization, or by the department, and training shall be given  
23 by the personnel of the facility, by a professional organization,  
24 by the department, by any junior college or by the vocational

1 education department of any high school. No program shall offer  
2 or provide training pursuant to this section unless the  
3 department has approved the program prior to the offering or  
4 provision of such training.

5 2. As used in this section the term "nursing assistant"  
6 means an employee, including a nurse's aide or an orderly, who is  
7 assigned by a skilled nursing or intermediate care facility to  
8 provide or assist in the provision of direct resident health care  
9 services under the supervision of a nurse licensed under the  
10 nursing practice law, chapter 335, RSMo. This section shall not  
11 apply to any person otherwise licensed to perform health care  
12 services under the laws of this state. It shall not apply to  
13 volunteers or to members of religious or fraternal orders which  
14 operate and administer the facility, if such volunteers or  
15 members work without compensation.

16 3. The training program after January 1, 1989, shall  
17 consist of at least the following:

18 (1) A training program consisting of at least seventy-five  
19 classroom hours of training on basic nursing skills, clinical  
20 practice, resident safety and rights, the social and  
21 psychological problems of residents, and the methods of handling  
22 and caring for mentally confused residents such as those with  
23 Alzheimer's disease and related disorders, and one hundred hours  
24 supervised and on-the-job training. The one hundred hours shall



1 be completed within one hundred twenty days of employment and may  
2 consist of normal employment as a nurse [assistants] assistant  
3 under the supervision of a licensed nurse; and

4 (2) Continuing in-service training to assure continuing  
5 competency in existing and new nursing skills. [All nursing  
6 assistants trained prior to January 1, 1989, shall attend, by  
7 August 31, 1989, an entire special retraining program established  
8 by rule or regulation of the department which shall contain  
9 information on methods of handling mentally confused residents  
10 and which may be offered on premises by the employing facility.]

11 4. Nursing assistants who have not successfully completed  
12 the nursing assistant training program prior to employment may  
13 begin duties as a nursing assistant only after completing an  
14 initial twelve hours of basic orientation approved by the  
15 department and may provide direct resident care only if under the  
16 general supervision of a licensed nurse prior to completion of  
17 the seventy-five classroom hours of the training program.

18 198.085. In establishing standards for each type of  
19 facility, the department shall classify the standards into three  
20 categories for each type of licensed facility as follows:

21 (1) Class I standards are standards the violation of which  
22 would present either an imminent danger to the health, safety or  
23 welfare of any resident or a substantial probability that death  
24 or serious physical harm would result. Class I standards shall

1 be divided into the following violation categories:

2 (a) Class I death violations which are violations of class  
3 I standards that have resulted in the death of a resident;

4 (b) Class I harm violations which are violations of class I  
5 standards that have resulted in serious physical harm to a  
6 resident; and

7 (c) Class I risk violations which are violations of class I  
8 standards that present an imminent danger to the health, safety,  
9 or welfare of a resident or a substantial probability that death  
10 or serious physical harm would result;

11 (2) Class II standards are standards which have a direct or  
12 immediate relationship to the health, safety or welfare of any  
13 resident, but which do not create imminent danger;

14 (3) Class III standards are standards which have an  
15 indirect or a potential impact on the health, safety or welfare  
16 of any resident.

17 198.088. 1. Every facility, in accordance with the rules  
18 applying to each particular type of facility, shall ensure that:

19 (1) There are written policies and procedures available to  
20 staff, residents, their families or legal representative and the  
21 public which govern all areas of service provided by the  
22 facility. The facility shall also retain and make available for  
23 public inspection at the facility to staff, residents, their  
24 families or legal representative and the public a complete copy

1 of each official notification from the department of violations,  
2 deficiencies, licensure approvals, disapprovals, and responses, a  
3 description of services, basic rate and charges for any services  
4 not covered by the basic rate, if any, and a list of names,  
5 addresses and occupation of all individuals who have a  
6 proprietary interest in the facility;

7 (2) Policies relating to admission, transfer, and discharge  
8 of residents shall assure that:

9 (a) Only those persons are accepted whose needs can be met  
10 by the facility directly or in cooperation with community  
11 resources or other providers of care with which it is affiliated  
12 or has contracts;

13 (b) As changes occur in their physical or mental condition,  
14 necessitating service or care which cannot be adequately provided  
15 by the facility, residents are transferred promptly to hospitals,  
16 skilled nursing facilities, or other appropriate facilities; and

17 (c) Except in the case of an emergency, the resident, [his]  
18 the resident's next of kin, attending physician, and the  
19 responsible agency, if any, are consulted at least thirty days in  
20 advance of the transfer or discharge of any resident, and  
21 casework services or other means are utilized to assure that  
22 adequate arrangements exist for meeting [his] the resident's  
23 needs through other resources;

24 (3) Policies define the uses of chemical and physical

1 restraints, identify the professional personnel who may authorize  
2 the application of restraints in emergencies and describe the  
3 mechanism for monitoring and controlling their use;

4 (4) Policies define procedures for submittal of complaints  
5 and recommendations by residents and for assuring response and  
6 disposition;

7 (5) There are written policies governing access to,  
8 duplication of, and dissemination of information from the  
9 resident's records;

10 (6) Each resident admitted to the facility:

11 (a) Is fully informed of his or her rights and  
12 responsibilities as a resident. Prior to or at the time of  
13 admission, a list of resident rights shall be provided to each  
14 resident, or [his] the resident's designee, next of kin, or legal  
15 guardian. A list of resident rights shall be posted in a  
16 conspicuous location in the facility and copies shall be  
17 available to anyone upon request;

18 (b) Is fully informed in writing, prior to or at the time  
19 of admission and during stay, of services available in the  
20 facility, and of related charges including any charges for  
21 services not covered under the federal or state programs or not  
22 covered by the facility's basic per diem rate;

23 (c) Is fully informed by a physician of his or her health  
24 and medical condition unless medically contraindicated, as

1 documented by a physician in his or her resident record, and is  
2 afforded the opportunity to participate in the planning of [his]  
3 the resident's total care and medical treatment and to refuse  
4 treatment, and participates in experimental research only upon  
5 [his] the resident's informed written consent;

6 (d) Is transferred or discharged only for medical reasons  
7 or for [his] the resident's welfare or that of other residents,  
8 or for nonpayment for [his] the resident's stay. No resident may  
9 be discharged without notice of his or her right to a hearing and  
10 an opportunity to be heard on the issue of whether [his] the  
11 resident's immediate discharge is necessary. Such notice shall  
12 be given in writing no less than thirty days in advance of the  
13 discharge except in the case of an emergency discharge. In  
14 emergency discharges a written notice of discharge and right to a  
15 hearing shall be given as soon as practicable and an expedited  
16 hearing shall be held upon request of the resident, next of kin,  
17 legal guardian, or nursing facility;

18 (e) Is encouraged and assisted, throughout [his] the  
19 resident's period of stay, to exercise his or her rights as a  
20 resident and as a citizen, and to this end may voice grievances  
21 and recommend changes in policies and services to facility staff  
22 or to outside representatives of [his] the resident's choice,  
23 free from restraint, interference, coercion, discrimination, or  
24 reprisal;

1           (f) May manage [his] the resident's personal financial  
2           affairs, and, to the extent that the facility assists in such  
3           management, has [his] the resident's personal financial affairs  
4           managed in accordance with section 198.090;

5           (g) Is free from mental and physical abuse and neglect, and  
6           free from chemical and physical restraints except as follows:

7           a. When used as a part of a total program of care to assist  
8           the resident to attain or maintain the highest practicable level  
9           of physical, mental or psychosocial well-being;

10          b. When authorized in writing by a physician for a  
11          specified period of time; and

12          c. When necessary in an emergency to protect the resident  
13          from injury to himself or herself, or to others, in which case  
14          restraints may be authorized by designated professional personnel  
15          who promptly report the action taken to the physician.

16          When restraints are indicated, devices that are least  
17          restrictive, consistent with the resident's total treatment  
18          program, shall be used;

19          (h) Is ensured confidential treatment of all information  
20          contained in [his] the resident's records, including information  
21          contained in an automatic data bank, and [his] the resident's  
22          written consent shall be required for the release of information  
23          to persons not otherwise authorized under law to receive it;

1           (i) Is treated with consideration, respect, and full  
2 recognition of [his] the resident's dignity and individuality,  
3 including privacy in treatment and in care for [his] the  
4 resident's personal needs;

5           (j) Is not required to perform services for the facility;

6           (k) May communicate, associate and meet privately with  
7 persons of [his] the resident's choice, unless to do so would  
8 infringe upon the rights of other residents, and send and receive  
9 his or her personal mail unopened;

10          (l) May participate in activities of social, religious and  
11 community groups at [his] the resident's discretion, unless  
12 contraindicated for reasons documented by a physician in the  
13 resident's medical record;

14          (m) May retain and use [his] the resident's personal  
15 clothing and possessions as space permits;

16          (n) If married, is ensured privacy for visits by his or her  
17 spouse; if both are residents in the facility, they are permitted  
18 to share a room; and

19          (o) Is allowed the option of purchasing or renting goods or  
20 services not included in the per diem or monthly rate from a  
21 supplier of [his] the resident's own choice;

22          (7) The resident or [his] the resident's designee, next of  
23 kin or legal guardian receives an itemized bill for all goods and  
24 services actually rendered;

1           (8) A written account, available to residents and their  
2 families, is maintained on a current basis for each resident with  
3 written receipts for all personal possessions and funds received  
4 by or deposited with the facility and for all disbursements made  
5 to or on behalf of the resident.

6           2. Each facility and the department shall encourage and  
7 assist residents in the free exercise of the resident's rights to  
8 civil and religious liberties, including knowledge of available  
9 choices and the right to independent personal decision. Each  
10 resident shall be given a copy of a statement of [his] the  
11 resident's rights and responsibilities, including a copy of the  
12 facility's rules and regulations. Each facility shall prepare a  
13 written plan to ensure the respect of each resident's rights and  
14 privacy and shall provide appropriate staff training to implement  
15 the plan.

16           3. (1) Each facility shall establish written procedures  
17 approved by the department by which complaints and grievances of  
18 residents may be heard and considered. The procedures shall  
19 provide for referral to the department of any complaints or  
20 grievances not resolved by the facility's grievance procedure.

21           (2) Each facility shall designate one staff member,  
22 employed full time, referred to in this subsection as the  
23 "designee", to receive all grievances when they are first made.

24           (3) If anyone wishes to complain about treatment,



1 conditions, or violations of rights, [he] such person shall write  
2 or cause to be written his or her grievance or shall state it  
3 orally to the designee no later than fourteen days after the  
4 occurrence giving rise to the grievance. When the department  
5 receives a complaint that does not contain allegations of abuse  
6 or neglect or allegations which would, if substantiated,  
7 constitute violation of a class I or class II standard as defined  
8 in section 198.085, and the complainant indicates that the  
9 complaint was not filed with the facility prior to the reporting  
10 of it to the department, the department may in such instances  
11 refer the complaint to the staff person who is designated by the  
12 facility to receive all grievances when they are first made. In  
13 such instances the department shall assure appropriate response  
14 from the facility, assure resolution at a subsequent on-site  
15 visit and provide a report to the complainant. The designee  
16 shall confer with persons involved in the occurrence and with any  
17 other witnesses and, no later than three days after the  
18 grievance, give a written explanation of findings and proposed  
19 remedies, if any, to the complainant and to the aggrieved party,  
20 if someone other than the complainant. Where appropriate because  
21 of the mental or physical condition of the complainant or the  
22 aggrieved party, the written explanation shall be accompanied by  
23 an oral explanation.

24 (4) The department shall establish and implement procedures

1 for the making and transmission of complaints to the department  
2 by any person alleging violation of the provisions of sections  
3 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, and the  
4 standards established thereunder. The department shall promptly  
5 review each complaint. In the case of a refusal to investigate,  
6 the department shall promptly notify the complainant of its  
7 refusal and the reasons therefor; and in every other case, the  
8 department shall, following investigation, notify the complainant  
9 of its investigation and any proposed action.

10 4. Whenever the department finds upon investigation that  
11 there have been violations of the provisions of sections 198.003  
12 to 198.186, 198.200, 208.030, and 208.159, RSMo, or the standards  
13 established thereunder by any person licensed under the  
14 provisions of chapter 330, 331, 332, 334, 335, 336, 337, 338, or  
15 344, RSMo, the department shall forward a report of its findings  
16 to the appropriate licensing or examining board for further  
17 investigation.

18 5. Each facility shall maintain a complete record of  
19 complaints and grievances made against such facility and a record  
20 of the final disposition of the complaints and grievances. Such  
21 record shall be open to inspection by representatives of the  
22 department during normal business hours.

23 6. Nothing in this section shall be construed as requiring  
24 a resident to exhaust grievance procedures established by the

1 facility or by the department prior to filing a complaint  
2 pursuant to section 198.090.

3 198.093. 1. Any resident or former resident who is  
4 deprived of any right created by sections 198.088 and 198.090, or  
5 the estate of a former resident so deprived, may file a written  
6 complaint within [one hundred eighty days] two years of the  
7 alleged deprivation or injury with the office of the attorney  
8 general describing the facts surrounding the alleged deprivation.  
9 A copy of the complaint shall be sent to the department by the  
10 attorney general.

11 2. The attorney general shall review each complaint and may  
12 initiate legal action as provided under sections 198.003 to  
13 198.186.

14 3. If the attorney general fails to initiate a legal action  
15 within sixty days of receipt of the complaint, the complainant  
16 may, within two hundred forty days of filing the complaint with  
17 the attorney general, bring a civil action in an appropriate  
18 court against any owner, operator or the agent of any owner or  
19 operator to recover actual damages. The court may, in its  
20 discretion, award punitive damages which shall be limited to the  
21 larger of five hundred dollars or five times the amount of  
22 special damages, unless the deprivation complained of is the  
23 result of an intentional act or omission causing physical or  
24 emotional injury to the resident, and may award to the prevailing

1 party attorney's fees based on the amount of time reasonably  
2 expended, and may provide such equitable relief as it deems  
3 necessary and proper; except that, an attorney who is paid in  
4 whole or part from public funds for his or her representation in  
5 any cause arising under this section shall not be awarded any  
6 attorney fees.

7 4. No owner or operator who pleads and proves as an  
8 affirmative defense that he or she exercised all care reasonably  
9 necessary to prevent the deprivation and injury for which  
10 liability is asserted shall be liable under this section.

11 5. Persons bringing suit to recover against a bond for  
12 personal funds pursuant to section 198.096 shall not be required  
13 to first file a complaint with the attorney general pursuant to  
14 subsection 1 of this section, nor shall subsection 1 be construed  
15 to limit in any way the right to recover on such bond.

16 6. Nothing contained in sections 198.003 to 198.186 shall  
17 be construed as abrogating, abridging or otherwise limiting the  
18 right of any person to bring appropriate legal actions in any  
19 court of competent jurisdiction to insure or enforce any legal  
20 right or to seek damages, nor shall any provision of the  
21 above-named sections be construed as preventing or discouraging  
22 any person from filing a complaint with the department or  
23 notifying the department of any alleged deficiency or  
24 noncompliance on the part of any facility.

1       198.094. All facilities licensed pursuant to this chapter  
2       that receive Medicaid funding for residents pursuant to chapter  
3       208, RSMo, shall submit an annual financial statement by October  
4       fifteenth of each year on a form developed by the department of  
5       health and senior services. The completed forms shall be  
6       compiled by the department and submitted as a detailed report to  
7       the members of the general assembly and the governor no later  
8       than January fifteenth of each year. The form shall include but  
9       is not limited to a request for the following information:

10       (1) The range in salary of employees by job title,  
11       including administrator for the previous fiscal year;

12       (2) Dividends paid to any shareholder, itemized by  
13       shareholder;

14       (3) Any other remuneration paid to other persons in the  
15       form of distribution of profit or consulting fees;

16       (4) Payments to any entity as operator fees;

17       (5) Ownership by any shareholder, partner, or employee in  
18       any entity which does business with any facility licensed  
19       pursuant to this chapter. Such form shall include the date in  
20       which such ownership was acquired and the percentage of  
21       ownership; and

22       (6) If a facility is owned by a publicly traded entity, a  
23       copy of its Form 8-K filed with the United States Securities and  
24       Exchange Commission.

1       198.345. Nothing in sections 198.200 to 198.350 shall  
2       prohibit a nursing home district from establishing and  
3       maintaining senior housing within its corporate limits.

4       198.525. Except as otherwise provided for in section  
5       198.526, in order to comply with sections 198.012 and 198.022,  
6       the department of health and senior services shall inspect  
7       residential care facilities II, intermediate care facilities and  
8       skilled nursing facilities attached to acute care hospitals at  
9       least twice a year.

10       198.526. 1. Except as provided for in subsection 3 of this  
11       section, the [division of aging] department of health and senior  
12       services shall inspect all facilities licensed by the [division]  
13       department at least twice each year. Such inspections shall be  
14       conducted:

15           (1) Without the prior notification of the facility; and

16           (2) At times of the day, on dates and at intervals which do  
17       not permit facilities to anticipate such inspections.

18       2. The [division] department shall annually reevaluate the  
19       inspection process to ensure the requirements [of subsection 1]  
20       of this section are met.

21       3. The department may reduce the frequency of inspections  
22       to once a year if:

23           (1) The facility has no class I deficiencies or class II  
24       violations related to the direct care of residents during an

1 original inspection. A finding of substantial compliance after  
2 one or more revisits to an original inspection does not satisfy  
3 the requirements of this subdivision;

4 (2) In the year subsequent to a finding of no class I  
5 deficiencies or class II violations related to the direct care of  
6 residents pursuant to subdivision (1) of this subsection, the  
7 facility has no substantiated complaints involving class I  
8 deficiencies or class II violations related to the direct care of  
9 residents; and

10 (3) In the year subsequent to a finding of no class I  
11 deficiencies or class II violations related to the direct care of  
12 residents pursuant to subdivision (1) of this subsection, the  
13 facility does not have a change in ownership, operator, or  
14 director of nursing.

15 4. Notwithstanding any other provision of law to the  
16 contrary, the department may inspect any facility at any time.  
17 The department may, but is not required, to conduct an inspection  
18 in connection with the investigation of any complaint filed  
19 against any facility. Federal laws and rules governing surveys  
20 of facilities are not affected by the provisions of this or any  
21 other provision of state law.

22 198.531. 1. The [division of aging] department of health  
23 and senior services, in collaboration with qualified Missouri  
24 schools and universities, shall establish an aging-in-place pilot

1 program at a maximum of four selected sites throughout the state  
2 which will provide a continuum of care for elders who need  
3 long-term care. For purposes of this section, "qualified  
4 Missouri schools and universities" means any Missouri school or  
5 university which has a school of nursing, a graduate nursing  
6 program, or any other similar program or specialized expertise in  
7 the areas of aging, long-term care or health services for the  
8 elderly.

9 2. The pilot program shall:

10 (1) Deliver a full range of physical and mental health  
11 services to residents in the least restrictive environment of  
12 choice to reduce the necessity of relocating such residents to  
13 other locations as their health care needs change;

14 (2) Base licensure on services provided rather than on  
15 facility type; and

16 (3) Be established in selected urban, rural and regional  
17 sites throughout the state.

18 3. The directors of the [division of aging and division of  
19 medical services] departments of health and senior services and  
20 social services, or their designees, shall apply for all federal  
21 waivers necessary to provide Medicaid reimbursement for health  
22 care services received through the aging-in-place pilot program.

23 4. The [division of aging] department of health and senior  
24 services shall monitor the pilot program and report to the



1 general assembly, not later than January 1, 2008, on the  
2 effectiveness of such program, including quality of care,  
3 resident satisfaction, and cost-effectiveness [to include] and  
4 the cost equivalent of unpaid or volunteer labor. Pilot program  
5 success and effectiveness shall be used to establish a new  
6 licensure category for the provision of aging-in-place services.  
7 The department of health and senior services may, for the purpose  
8 of implementing and evaluating the effectiveness of the pilot  
9 program, grant exceptions to sections 198.003 to 198.186, during  
10 the pilot program period if the department has determined that  
11 the exception would not potentially jeopardize the health,  
12 safety, or welfare of any resident of the aging-in-place pilot  
13 program.

14 5. Developments authorized by this section shall be exempt  
15 from the provisions of sections 197.300 to 197.367, RSMo[, and  
16 shall be licensed by the division of aging].

17 6. Developments authorized by this section shall, for the  
18 duration of the pilot program and continuing thereafter upon the  
19 expiration or termination of or withdrawal from the program, be  
20 exempt from the provisions of sections 197.300 to 197.366, RSMo,  
21 and may continue to be licensed by the department of health and  
22 senior services provided such developments continue to meet the  
23 standards of licensure established by the department.

24 354.407. Notwithstanding the provisions of section 354.405

1 to the contrary, a program for all-inclusive care for the elderly  
2 (PACE) project sponsored by a religious or charitable  
3 organization that is itself or is controlled by an entity  
4 organized under Section 501(c)(3) of the Internal Revenue Code  
5 and which has had its application for the operation of a PACE  
6 program approved by the Center for Medicare and Medicaid Services  
7 of the federal Department of Health and Human Services and is  
8 operating under such approval shall not be deemed to be engaged  
9 in any business required to be licensed pursuant to section  
10 354.405. Such exemption shall apply only to business conducted  
11 pursuant to the approved PACE contract and not to any other  
12 business that such organization may conduct.

13 565.186. The department of social services shall  
14 investigate incidents and reports of elder abuse using the  
15 procedures established in sections 660.250 to 660.295, RSMo, and  
16 [upon substantiation of the report of] suspects elder abuse,  
17 shall promptly report the incident to the appropriate law  
18 enforcement agency and prosecutor and shall determine whether  
19 protective services are required pursuant to sections 660.250 to  
20 660.295, RSMo.

21 565.188. 1. When any physician, medical examiner, coroner,  
22 dentist, chiropractor, optometrist, podiatrist, [resident  
23 intern,] nurse, nurse practitioner, physician's  
24 assistant, hospital and clinic personnel engaged in examination,

1 care or treatment of persons, or other health practitioners,  
2 psychologists, mental health professional, pharmacist, physical  
3 therapist, social worker, adult day care center worker, nursing  
4 home worker, or any owner or employee of a facility licensed  
5 pursuant to chapter 198, RSMo, probation or parole officer,  
6 minister, Christian Science practitioner, peace officer or law  
7 enforcement official, in-home services owner, operator, or  
8 employee, employee of the departments of health and senior  
9 services, social services, or mental health, or other person with  
10 responsibility for the care of a person sixty years of age or  
11 older who is unable to protect his or her own interests or  
12 adequately perform or obtain services which are necessary to meet  
13 his or her essential human needs has reasonable cause to suspect  
14 that such a person has been subjected to abuse or neglect or  
15 observes such a person being subjected to conditions or  
16 circumstances which would reasonably result in abuse or neglect,  
17 he shall immediately report or cause a report to be made to the  
18 department in accordance with the provisions of sections 660.250  
19 to 660.295, RSMo. Any other person who becomes aware of  
20 circumstances which may reasonably be expected to be the result  
21 of or result in abuse or neglect may report to the department.

22 2. Any person who knowingly fails to make a report as  
23 required in subsection 1 of this section is guilty of a class A  
24 misdemeanor.

1           3. Any person who purposely files a false report of elder  
2 abuse or neglect shall be guilty of a class A misdemeanor.

3           4. Every person who has been previously convicted of or  
4 pled guilty to making a false report to the department and who is  
5 subsequently convicted of making a false report under subsection  
6 3 of this section is guilty of a class D felony.

7           5. Evidence of prior convictions of false reporting shall  
8 be heard by the court, out of the hearing of the jury, prior to  
9 the submission of the case to the jury, and the court shall  
10 determine the existence of the prior convictions.

11           565.200. 1. Any owner or employee of a skilled nursing  
12 facility, as defined in section 198.006, RSMo, or an Alzheimer's  
13 special unit or program, as defined in section 198.505, RSMo,  
14 who:

15           (1) Has sexual contact, as defined in section 566.010,  
16 RSMo, with a resident is guilty of a class B misdemeanor. Any  
17 person who commits a second or subsequent violation of this  
18 subdivision is guilty of a class A misdemeanor; or

19           (2) Has sexual intercourse or deviate sexual intercourse,  
20 as defined in section 566.010, RSMo, with a resident is guilty of  
21 a class D felony. Any person who commits a second or subsequent  
22 violation of this subdivision is guilty of a class C felony.

23           2. The provisions of this section shall not apply to an  
24 owner or employee of a skilled nursing facility or Alzheimer's

1 special unit or program who engages in sexual conduct, as defined  
2 in section 566.010, RSMo, with a resident to whom the owner or  
3 employee is married.

4 3. Consent of the victim is not a defense to a prosecution  
5 pursuant to this section.

6 630.140. 1. Information and records compiled, obtained,  
7 prepared or maintained by the residential facility, day program  
8 operated, funded or licensed by the department or otherwise,  
9 specialized service, or by any mental health facility or mental  
10 health program in which people may be civilly detained pursuant  
11 to chapter 632, RSMo, in the course of providing services to  
12 either voluntary or involuntary patients, residents or clients  
13 shall be confidential.

14 2. The facilities or programs shall disclose information  
15 and records including medication given, dosage levels, and  
16 individual ordering such medication to the following upon their  
17 request:

18 (1) The parent of a minor patient, resident or client;

19 (2) The guardian or other person having legal custody of  
20 the patient, resident or client;

21 (3) The attorney of a patient, resident or client who is a  
22 ward of the juvenile court, an alleged incompetent, an  
23 incompetent ward or a person detained under chapter 632, RSMo, as  
24 evidenced by court orders of the attorney's appointment;

1           (4) An attorney or personal physician as authorized by the  
2 patient, resident or client;

3           (5) Law enforcement officers and agencies, information  
4 about patients, residents or clients committed pursuant to  
5 chapter 552, RSMo, but only to the extent necessary to carry out  
6 the responsibilities of their office, and all such law  
7 enforcement officers shall be obligated to keep such information  
8 confidential;

9           (6) The entity or agency authorized to implement a system  
10 to protect and advocate the rights of persons with developmental  
11 disabilities under the provisions of 42 U.S.C. 6042. The entity  
12 or agency shall be able to obtain access to the records of a  
13 person with developmental disabilities who is a client of the  
14 entity or agency if such person has authorized the entity or  
15 agency to have such access; and the records of any person with  
16 developmental disabilities who, by reason of mental or physical  
17 condition is unable to authorize the entity or agency to have  
18 such access, if such person does not have a legal guardian,  
19 conservator or other legal representative, and a complaint has  
20 been received by the entity or agency with respect to such person  
21 or there is probable cause to believe that such person has been  
22 subject to abuse or neglect. The entity or agency obtaining  
23 access to a person's records shall meet all requirements for  
24 confidentiality as set out in this section;

1           (7) The entity or agency authorized to implement a system  
2 to protect and advocate the rights of persons with mental illness  
3 under the provisions of 42 U.S.C 10801 shall be able to obtain  
4 access to the records of a patient, resident or client who by  
5 reason of mental or physical condition is unable to authorize the  
6 system to have such access, who does not have a legal guardian,  
7 conservator or other legal representative and with respect to  
8 whom a complaint has been received by the system or there is  
9 probable cause to believe that such individual has been subject  
10 to abuse or neglect. The entity or agency obtaining access to a  
11 person's records shall meet all requirements for confidentiality  
12 as set out in this section. The provisions of this subdivision  
13 shall apply to a person who has a significant mental illness or  
14 impairment as determined by a mental health professional  
15 qualified under the laws and regulations of the state;

16           (8) To mental health coordinators, but only to the extent  
17 necessary to carry out their duties under chapter 632, RSMo.

18           3. The facilities or services may disclose information and  
19 records under any of the following:

20           (1) As authorized by the patient, resident or client;

21           (2) To persons or agencies responsible for providing health  
22 care services to such patients, residents or clients;

23           (3) To the extent necessary for a recipient to make a claim  
24 or for a claim to be made on behalf of a recipient for aid or

1 insurance;

2 (4) To qualified personnel for the purpose of conducting  
3 scientific research, management audits, financial audits, program  
4 evaluations or similar studies; provided, that such personnel  
5 shall not identify, directly or indirectly, any individual  
6 patient, resident or client in any report of such research, audit  
7 or evaluation, or otherwise disclose patient, resident or client  
8 identities in any manner;

9 (5) To the courts as necessary for the administration of  
10 chapter 211, RSMo, 475, RSMo, 552, RSMo, or 632, RSMo;

11 (6) To law enforcement officers or public health officers,  
12 but only to the extent necessary to carry out the  
13 responsibilities of their office, and all such law enforcement  
14 and public health officers shall be obligated to keep such  
15 information confidential;

16 (7) Pursuant to an order of a court or administrative  
17 agency of competent jurisdiction;

18 (8) To the attorney representing petitioners, but only to  
19 the extent necessary to carry out their duties under chapter 632,  
20 RSMo;

21 (9) To the department of social services or the department  
22 of health and senior services as necessary to report or have  
23 investigated abuse, neglect, or rights violations of patients,  
24 residents, or clients;



1           (10) To a county board established pursuant to sections  
2   205.968 to 205.972, RSMo 1986, but only to the extent necessary  
3   to carry out their statutory responsibilities. The county board  
4   shall not identify, directly or indirectly, any individual  
5   patient, resident or client.

6           4. The facility or program shall document the dates,  
7   nature, purposes and recipients of any records disclosed under  
8   this section and sections 630.145 and 630.150.

9           5. The records and files maintained in any court proceeding  
10   under chapter 632, RSMo, shall be confidential and available only  
11   to the patient, his attorney, guardian, or, in the case of a  
12   minor, to a parent or other person having legal custody of the  
13   patient, and to the petitioner and his attorney. In addition,  
14   the court may order the release or use of such records or files  
15   only upon good cause shown, and the court may impose such  
16   restrictions as the court deems appropriate.

17          6. Nothing contained in this chapter shall limit the rights  
18   of discovery in judicial or administrative procedures as  
19   otherwise provided for by statute or rule.

20          7. The fact of admission of a voluntary or involuntary  
21   patient to a mental health facility under chapter 632, RSMo, may  
22   only be disclosed as specified in subsections 2 and 3 of this  
23   section.

24          630.167. 1. Upon receipt of a report, the department or

1 its agents, contractors or vendors or the department of health  
2 and senior services, if such facility or program is licensed  
3 pursuant to chapter 197, RSMo, shall initiate an investigation  
4 within twenty-four hours.

5 2. If the investigation indicates possible abuse or neglect  
6 of a patient, resident or client, the investigator shall refer  
7 the complaint together with the investigator's report to the  
8 department director for appropriate action. If, during the  
9 investigation or at its completion, the department has reasonable  
10 cause to believe that immediate removal from a facility not  
11 operated or funded by the department is necessary to protect the  
12 residents from abuse or neglect, the department or the local  
13 prosecuting attorney may, or the attorney general upon request of  
14 the department shall, file a petition for temporary care and  
15 protection of the residents in a circuit court of competent  
16 jurisdiction. The circuit court in which the petition is filed  
17 shall have equitable jurisdiction to issue an ex parte order  
18 granting the department authority for the temporary care and  
19 protection of the resident for a period not to exceed thirty  
20 days.

21 3. (1) Reports referred to in section 630.165 and the  
22 investigative reports referred to in this section shall be  
23 confidential, shall not be deemed a public record, and shall not  
24 be subject to the provisions of section 109.180, RSMo, or chapter

1       610, RSMo; except that: complete copies all such reports shall  
2       be open and available to the parents or other guardian of the  
3       patient, resident, or client who is the subject of such report,  
4       except that the names and any other descriptive information of  
5       the complainant or other person mentioned in the reports shall  
6       not be disclosed unless such complainant or person specifically  
7       consents to such disclosure. All reports referred to in this  
8       section shall be admissible in any judicial proceedings or  
9       hearing in accordance with section 36.390, RSMo, or any  
10      administrative hearing before the director of the department of  
11      mental health, or the director's designee. All such reports may  
12      be disclosed by the department of mental health to law  
13      enforcement officers and public health officers, but only to the  
14      extent necessary to carry out the responsibilities of their  
15      offices, and to the department of social services and the  
16      department of health and senior services, and to boards appointed  
17      pursuant to sections 205.968 to 205.990, RSMo, that are providing  
18      services to the patient, resident or client as necessary to  
19      report or have investigated abuse, neglect, or rights violations  
20      of patients, residents or clients provided that all such law  
21      enforcement officers, public health officers, department of  
22      social services' officers, department of health and senior  
23      services' officers, and boards shall be obligated to keep such  
24      information confidential;

1           (2) Except as otherwise provided in this section, the  
2     proceedings, findings, deliberations, reports and minutes of  
3     committees of health care professionals as defined in section  
4     537.035, RSMo, or mental health professionals as defined in  
5     section 632.005, RSMo, who have the responsibility to evaluate,  
6     maintain, or monitor the quality and utilization of mental health  
7     services are privileged and shall not be subject to the  
8     discovery, subpoena or other means of legal compulsion for their  
9     release to any person or entity or be admissible into evidence  
10    into any judicial or administrative action for failure to provide  
11    adequate or appropriate care. Such committees may exist, either  
12    within department facilities or its agents, contractors, or  
13    vendors, as applicable. Except as otherwise provided in this  
14    section, no person who was in attendance at any investigation or  
15    committee proceeding shall be permitted or required to disclose  
16    any information acquired in connection with or in the course of  
17    such proceeding or to disclose any opinion, recommendation or  
18    evaluation of the committee or board or any member thereof;  
19    provided, however, that information otherwise discoverable or  
20    admissible from original sources is not to be construed as immune  
21    from discovery or use in any proceeding merely because it was  
22    presented during proceedings before any committee or in the  
23    course of any investigation, nor is any member, employee or agent  
24    of such committee or other person appearing before it to be

1 prevented from testifying as to matters within their personal  
2 knowledge and in accordance with the other provisions of this  
3 section, but such witness cannot be questioned about the  
4 testimony or other proceedings before any investigation or before  
5 any committee;

6 (3) Nothing in this section shall limit authority otherwise  
7 provided by law of a health care licensing board of the state of  
8 Missouri to obtain information by subpoena or other authorized  
9 process from investigation committees or to require disclosure of  
10 otherwise confidential information relating to matters and  
11 investigations within the jurisdiction of such health care  
12 licensing boards; provided, however, that such information, once  
13 obtained by such board and associated persons, shall be governed  
14 in accordance with the provisions of this subsection;

15 (4) Nothing in this section shall limit authority otherwise  
16 provided by law in subdivisions (5) and (6) of subsection 2 of  
17 section 630.140 concerning access to records by the entity or  
18 agency authorized to implement a system to protect and advocate  
19 the rights of persons with developmental disabilities under the  
20 provisions of 42 U.S.C. 6042 and the entity or agency authorized  
21 to implement a system to protect and advocate the rights of  
22 persons with mental illness under the provisions of 42 U.S.C.  
23 10801. In addition, nothing in this section shall serve to  
24 negate assurances that have been given by the governor of

1 Missouri to the U.S. Administration on Developmental  
2 Disabilities, Office of Human Development Services, Department of  
3 Health and Human Services concerning access to records by the  
4 agency designated as the protection and advocacy system for the  
5 state of Missouri. However, such information, once obtained by  
6 such entity or agency, shall be governed in accordance with the  
7 provisions of this subsection.

8 4. Anyone who makes a report pursuant to this section or  
9 who testifies in any administrative or judicial proceeding  
10 arising from the report shall be immune from any civil liability  
11 for making such a report or for testifying unless such person  
12 acted in bad faith or with malicious purpose.

13 5. Within five working days after a report required to be  
14 made pursuant to this section is received, the person making the  
15 report shall be notified in writing of its receipt and of the  
16 initiation of the investigation.

17 6. No person who directs or exercises any authority in a  
18 residential facility, day program or specialized service shall  
19 evict, harass, dismiss or retaliate against a patient, resident  
20 or client or employee because he or she or any member of his or  
21 her family has made a report of any violation or suspected  
22 violation of laws, ordinances or regulations applying to the  
23 facility which he or she has reasonable cause to believe has been  
24 committed or has occurred.

1           7. Any person who is discharged as a result of an  
2 administrative substantiation of allegations contained in a  
3 report of abuse or neglect may, after exhausting administrative  
4 remedies as provided in chapter 36, RSMo, appeal such decision to  
5 the circuit court of the county in which such person resides  
6 within ninety days of such final administrative decision. The  
7 court may accept an appeal up to twenty-four months after the  
8 party filing the appeal received notice of the department's  
9 determination, upon a showing that:

10           (1) Good cause exists for the untimely commencement of the  
11 request for the review;

12           (2) If the opportunity to appeal is not granted it will  
13 adversely affect the party's opportunity for employment; and

14           (3) There is no other adequate remedy at law.

15           660.071. 1. The division of senior services within the  
16 department of health and senior services shall create and make  
17 available through the department's Internet web site information  
18 that, to the best of their ability, provides a listing of all  
19 public or private companies or organizations providing services  
20 for older adults, including but not limited to adult day care,  
21 respite care, in-home care services, services provided by the  
22 area agency on aging and long-term care facilities operating in  
23 the state of Missouri. Such information shall:

24           (1) List the companies, organizations and facilities by

1 category and by region of the state; and

2 (2) Include the services available through each company,  
3 organization and facility; and

4 (3) Include a disclaimer that indicates that the division  
5 is providing information on the availability of services  
6 throughout the state only and such publication should not be  
7 interpreted as a rating or endorsement of any such company,  
8 organization or facility; and

9 (4) Include information to consumers on where to obtain  
10 inspection and survey information on listed companies, their  
11 licensure status and any other information that will provide  
12 consumers with information regarding the quality of services  
13 offered by providers of senior services; and

14 (5) Include the information in the division's current  
15 senior guide.

16 2. The information in this section provided on the  
17 department's Internet web site shall be:

18 (1) Categorized by region of the state;

19 (2) Available in a format that is easily printed and  
20 downloaded; and

21 (3) Accessible to the area agencies on aging.

22 660.250. As used in sections 660.250 to 660.305, the  
23 following terms mean:

24 (1) "Abuse", the infliction of physical, sexual, or



1 emotional injury or harm including financial exploitation by any  
2 person, firm or corporation;

3 (2) "Court", the circuit court;

4 (3) "Department", the department of social services;

5 (4) "Director", director of the department of social  
6 services or his designees;

7 (5) "Eligible adult", a person sixty years of age or older  
8 who is unable to protect his or her own interests or is unable to  
9 meet his or her essential human needs or an adult with a  
10 handicap, as defined in section 660.053, between the ages of  
11 eighteen and fifty-nine who is unable to protect his own  
12 interests or adequately perform or obtain services which are  
13 necessary to meet his essential human needs;

14 (6) "In-home services client", an eligible adult who is  
15 receiving services in his or her private residence through any  
16 in-home services provider agency;

17 (7) "In-home services employee", a person employed by an  
18 in-home services provider agency;

19 (8) "In-home services provider agency", a business entity  
20 under contract with the department or with a Medicaid  
21 participation agreement or an agency licensed by the department  
22 of health and senior services as provided in sections 197.400 to  
23 197.470, RSMo, which employs persons to deliver any kind of  
24 services provided for eligible adults in their private homes;

1           (9) "Least restrictive environment", a physical setting  
2 where protective services for the eligible adult and  
3 accommodation is provided in a manner no more restrictive of an  
4 individual's personal liberty and no more intrusive than  
5 necessary to achieve care and treatment objectives;

6           (10) "Likelihood of serious physical harm", one or more of  
7 the following:

8           (a) A substantial risk that physical harm to an eligible  
9 adult will occur because of his failure or inability to provide  
10 for his essential human needs as evidenced by acts or behavior  
11 which has caused such harm or which gives another person probable  
12 cause to believe that the eligible adult will sustain such harm;

13           (b) A substantial risk that physical harm will be inflicted  
14 by an eligible adult upon himself, as evidenced by recent  
15 credible threats, acts, or behavior which has caused such harm or  
16 which places another person in reasonable fear that the eligible  
17 adult will sustain such harm;

18           (c) A substantial risk that physical harm will be inflicted  
19 by another upon an eligible adult as evidenced by recent acts or  
20 behavior which has caused such harm or which gives another person  
21 probable cause to believe the eligible adult will sustain such  
22 harm;

23           (d) A substantial risk that further physical harm will  
24 occur to an eligible adult who has suffered physical injury,

1 neglect, sexual or emotional abuse, or other maltreatment or  
2 wasting of his financial resources by another person;

3 (11) "Neglect", the failure to provide services to an  
4 eligible adult by any person, firm or corporation with a legal or  
5 contractual duty to do so, when such failure presents either an  
6 imminent danger to the health, safety, or welfare of the client  
7 or a substantial probability that death or serious physical harm  
8 would result;

9 (12) "Protective services", services provided by the state  
10 or other governmental or private organizations or individuals  
11 which are necessary for the eligible adult to meet his essential  
12 human needs.

13 660.252. 1. All Medicaid participation agreements entered  
14 into between the department of social services and in-home  
15 services provider agencies shall include a requirement that all  
16 in-home services employees of such agencies receive training on  
17 identification and prevention of elder abuse and neglect.

18 2. All Medicaid participation agreements entered into  
19 between the department of social services and long-term care  
20 facilities shall include a requirement that such facilities  
21 comply with the provisions of sections 660.600 to 660.608  
22 regarding access to such facilities by ombudsmen, or  
23 representatives of the office of the state ombudsmen for long-  
24 term care facility residents and the office of advocacy and

1 assistance for the elderly pursuant to chapter 660.

2 660.263. 1. Reports made pursuant to sections 660.250 to  
3 660.295 shall be confidential and shall not be deemed a public  
4 record and shall not be subject to the provisions of section  
5 109.180, RSMo, or chapter 610, RSMo.

6 2. Such reports shall be accessible without court order for  
7 examination and copying only to the following persons or offices,  
8 or to their designees:

9 (1) The department or any person or agency designated by  
10 the department;

11 (2) The attorney general;

12 (3) The department of mental health for persons referred  
13 to, from, or through that department;

14 (4) Any appropriate law enforcement agency; and

15 (5) The eligible adult or [his] such adult's legal guardian  
16 or conservator, or any other person designated by the eligible  
17 adult.

18 3. The name of the reporter shall not be disclosed unless:

19 (1) Such reporter specifically authorizes disclosure of his  
20 or her name; and

21 (2) The department determines that disclosure of the name  
22 of the reporter is necessary in order to prevent further harm to  
23 an eligible adult.

24 4. Any person who violates the provisions of this section,

1 or who permits or encourages the unauthorized dissemination of  
2 information contained in the central registry and in reports and  
3 records made pursuant to sections 660.250 to 660.295, shall be  
4 guilty of a class A misdemeanor.

5 5. The department shall maintain a central registry capable  
6 of receiving and maintaining reports received in a manner that  
7 facilitates rapid access and recall of the information reported,  
8 and of subsequent investigations and other relevant information.  
9 The department shall electronically record any telephone report  
10 of suspected abuse and neglect received by the department and  
11 such recorded reports shall be retained by the department for a  
12 period of one year after recording.

13 6. Although reports to the central registry may be made  
14 anonymously, the department shall in all cases, after obtaining  
15 relevant information regarding the alleged abuse or neglect,  
16 attempt to obtain the name and address of any person making a  
17 report.

18 660.270. When the department receives a report that there  
19 is a likelihood of [serious physical harm] abuse or neglect, as  
20 defined in section 660.250, to an eligible adult and that [he is]  
21 such adult may be in need of protective services and the  
22 department is unable to conduct an investigation because any  
23 person has prevented such investigation, including but not  
24 limited to denial of access to the eligible adult [is barred by

1 any person], the director may petition the appropriate court to  
2 enjoin interference with the investigation or for a warrant to  
3 enter upon the described premises and investigate the report.  
4 The application for the injunction or warrant shall identify the  
5 eligible adult and the facts and circumstances which require the  
6 issuance of the injunction or warrant. [The director may also  
7 seek an order to enjoin the person barring access from  
8 interfering with the investigation.] If the court finds that,  
9 based on the report and relevant circumstances and facts,  
10 probable cause exists showing that the eligible adult faces a  
11 likelihood of [serious physical harm and is] abuse or neglect, as  
12 defined in section 660.250, and may be in need of protective  
13 services and the director has been prevented by another person  
14 from investigating the report, including but not limited to  
15 denial of access to the eligible adult, the court may issue the  
16 warrant or enjoin the interference with the investigation or  
17 both.

18 660.300. 1. Beginning January 1, 1993, when any physician,  
19 dentist, chiropractor, optometrist, podiatrist, [intern,] nurse,  
20 nurse practitioner, physician's assistant, hospital and clinic  
21 personnel engaged in examination, care, or treatment of persons,  
22 or other health practitioners, medical examiner, coroner, mental  
23 health professional, social worker, psychologist, minister,  
24 Christian Science practitioner, peace officer, probation or

1 parole officer, law enforcement officer, pharmacist, physical  
2 therapist, in-home services owner, in-home services operator,  
3 in-home services employee, adult day care worker, or employee of  
4 the department of social services or of the department of health  
5 and senior services or of the department of mental health has  
6 reasonable cause to believe that an in-home services client has  
7 been abused or neglected, as a result of in-home services, he  
8 shall immediately report or cause a report to be made to the  
9 department.

10 2. Any person required in subsection 1 of this section to  
11 report or cause a report to be made to the department who fails  
12 to do so within a reasonable time after the act of abuse or  
13 neglect is guilty of a class A misdemeanor.

14 3. The report shall contain the names and addresses of the  
15 in-home services provider agency, the in-home services employee,  
16 the in-home services client, information regarding the nature of  
17 the abuse or neglect, the name of the complainant, and any other  
18 information which might be helpful in an investigation.

19 4. In addition to those persons required to report under  
20 subsection 1 of this section, any other person having reasonable  
21 cause to believe that an in-home services client has been abused  
22 or neglected by an in-home services employee may report such  
23 information to the department.

24 5. Upon receipt of a report, the department shall initiate

1 a prompt and thorough investigation.

2 6. If the investigation indicates possible abuse or neglect  
3 of an in-home services client, the investigator shall refer the  
4 complaint together with his report to the department director or  
5 his designee for appropriate action. If, during the  
6 investigation or at its completion, the department has reasonable  
7 cause to believe that immediate removal is necessary to protect  
8 the in-home services client from abuse or neglect, the department  
9 or the local prosecuting attorney may, or the attorney general  
10 upon request of the department shall, file a petition for  
11 temporary care and protection of the in-home services client in a  
12 circuit court of competent jurisdiction. The circuit court in  
13 which the petition is filed shall have equitable jurisdiction to  
14 issue an ex parte order granting the department authority for the  
15 temporary care and protection of the in-home services client, for  
16 a period not to exceed thirty days.

17 7. Reports shall be confidential, as provided under section  
18 660.320.

19 8. Anyone, except any person who has abused or neglected an  
20 in-home services client, who makes a report pursuant to this  
21 section or who testifies in any administrative or judicial  
22 proceeding arising from the report shall be immune from any civil  
23 or criminal liability for making such a report or for testifying  
24 except for liability for perjury, unless such person acted



1 negligently, recklessly, in bad faith, or with malicious purpose.

2 9. Within five working days after a report required to be  
3 made under this section is received, the person making the report  
4 shall be notified in writing of its receipt and of the initiation  
5 of the investigation.

6 10. No person who directs or exercises any authority in an  
7 in-home services provider agency shall harass, dismiss or  
8 retaliate against an in-home services client or an in-home  
9 services employee because he or any member of his family has made  
10 a report of any violation or suspected violation of laws,  
11 standards or regulations applying to the in-home services  
12 provider agency or any in-home services employee which he has  
13 reasonable cause to believe has been committed or has occurred.

14 11. Any person who knowingly abuses or neglects an in-home  
15 services client shall be guilty of a class D felony.

16 12. The department shall maintain the employee  
17 disqualification list and place on the employee disqualification  
18 list the names of any persons who have been finally determined by  
19 the department, pursuant to section 660.315, to have recklessly,  
20 knowingly or purposely abused or neglected an in-home services  
21 client while employed by an in-home services provider agency.

22 660.302. The department of health and senior services shall  
23 investigate incidents and reports of elder abuse using the  
24 procedures established in sections 660.250 to 660.295 and

1 notwithstanding any other provision of the law to the contrary,  
2 shall promptly refer all suspected cases of elder abuse to the  
3 appropriate law enforcement agency and prosecutor and determine  
4 whether protective services are required pursuant to sections  
5 660.250 to 660.295.

6 660.322. 1. The department and law enforcement agencies  
7 shall require training and cross-training of all investigatory  
8 personnel and other persons as deemed necessary regarding the  
9 proper handling of cases involving elder abuse. All  
10 noninvestigatory personnel and volunteers for local area agencies  
11 on aging shall be instructed on certain aspects of elder abuse,  
12 identification, and reporting procedures to ensure that such  
13 personnel and volunteers are able to recognize potential cases of  
14 abuse or neglect and take the necessary steps to properly report  
15 elder abuse or neglect cases, including instruction related to  
16 the preservation of evidence. Nothing in this subsection shall  
17 be construed to require noninvestigatory personnel and volunteers  
18 to act in an investigatory capacity in investigations of elder  
19 abuse or neglect. The department, in cooperation with law  
20 enforcement agencies, shall, by rule, develop a checklist for  
21 department and law enforcement personnel to follow when  
22 investigating possible elder abuse.

23 2. No rule or portion of a rule promulgated under the  
24 authority of this section shall become effective unless it has

1 been promulgated pursuant to chapter 536, RSMo.

2 Section 1. No long-term care facility shall be more than  
3 one hundred twenty days delinquent in payments to vendors of  
4 essential services, including but not limited to vendors of food,  
5 utilities, maintenance or pharmaceutical supplies, if such  
6 delinquency affects the quality of care received by the  
7 facility's residents. Upon receipt and verification of a  
8 complaint of delinquency of payment from a vendor of essential  
9 services, the department of health and senior services may  
10 require the facility to draft a plan of correction. If the  
11 department determines that the corrective measures are inadequate  
12 or have not been implemented, the department may impose sanctions  
13 against the facility, including revocation of the facility's  
14 license.

15 Section 2. 1. The division of medical services in the  
16 department of social services shall promulgate rules to permit a  
17 Medicaid reimbursement rate adjustment for participating  
18 long-term care facilities that experience a change in ownership.  
19 Such rules shall include provisions that:

20 (1) Permit any participating long-term care facility with a  
21 prospective rate to make a written request for an adjustment to  
22 its prospective rate due to a change in ownership which occurred  
23 within the last four years;

24 (2) Require such written request to clearly and

1 specifically identify the conditions for which the rate  
2 adjustment is sought;

3 (3) Require that the dollar amount of the requested rate  
4 adjustment be supported by complete, accurate, and documented  
5 records satisfactory to the division of medical services; and

6 (4) Require the division of medical services to consider a  
7 request withdrawn if the division makes a written request for  
8 additional information and the facility does not comply within  
9 ninety days of such request.

10 2. A rate adjustment based on a change in ownership shall  
11 be permitted if the following conditions are met:

12 (1) No principal of either the new owner or operating  
13 company of the facility was involved in the previous ownership;

14 (2) The facility must demonstrate that costs have increased  
15 as a result of the change of ownership. Increase in costs above  
16 the state average as of July 1, 2002, shall not be considered and  
17 the provider shall demonstrate that the increase in cost  
18 contributed to improved quality of care, life or environment for  
19 the residents; and

20 (3) The facility must demonstrate that current  
21 reimbursement is inadequate to meet the cost of providing the  
22 improved care, environment, and enhanced quality of life of the  
23 resident.

24 3. The division of medical services shall review on a

1 case-by-case basis any request made by a facility and shall  
2 consider improved department of health and senior services  
3 surveys, costs prior to and after the change of ownership,  
4 licensure applications, as well as any other documentation  
5 provided by the facility or requested by the division of medical  
6 services. Rate adjustments shall not exceed the calculated  
7 per-resident per-day cost shown on the most recent cost report;  
8 except that additional capital components may be considered if  
9 the facility can demonstrate that the capital expenditure did in  
10 fact enhance the environment for the resident.

11 4. The rate increase shall be calculated as follows:

12 (1) The rate adjustment shall be based on either the  
13 facility's most recently filed cost report which occurred under  
14 the new ownership or on the state average cost, as of July 1,  
15 2002, whichever is lower. The division shall not have the  
16 authority to disallow certain cost centers which may be inflated  
17 due to the type of ownership or management and may elect to use  
18 average state cost in any such disallowed center;

19 (2) For capitalized costs, a capital component per diem  
20 shall be calculated pursuant to 13 CSR 70-10. The rate adjustment  
21 shall be the difference between the capital component per diem  
22 prior to the change in ownership and the capital component per  
23 diem after the change in ownership.

24 Section 3. 1. By July 1, 2003, the department shall

1 establish a telephone check-in pilot project in one area of the  
2 state to be designated by the department. Such pilot project  
3 shall require that a telephone check-in system be established for  
4 in-home services employees, as defined in section 660.250, RSMo,  
5 to accurately document the actual time that such employees spend  
6 in clients' homes by requiring such employees to clock in and out  
7 of the client's home by telephone. Such system shall also  
8 require in-home services employees to thoroughly document the  
9 specific services delivered to clients.

10 2. The department may promulgate rules to implement the  
11 provisions of this section. No rule or portion of a rule  
12 promulgated under the authority of this section shall become  
13 effective unless it has been promulgated pursuant to chapter 536,  
14 RSMo.

15 [197.367. Upon application for renewal  
16 by any residential care facility I or II  
17 which on the effective date of this act has  
18 been licensed for more than five years, is  
19 licensed for more than fifty beds and fails  
20 to maintain for any calendar year its  
21 occupancy level above thirty percent of its  
22 then licensed beds, the division of aging  
23 shall license only fifty beds for such  
24 facility.]